

The first 3 items in
this collection give
the reader an idea of
the quality of the men
Baxley & Harding
responsible for the
“Don’t Say Gay”
legislation in Florida.

| **LISTS** |

Here's a Ranking of the Dumbest Quotes From Florida State Sen. Dennis Baxley

JERRY IANNELLI | JUNE 2, 2019 | 9:00AM



Florida House of Representatives Ocala State Senator Dennis Baxley

Florida state senator and Confederate Elmer Fudd impersonator Dennis Baxley has said some mind-bendingly dumb stuff during his unfortunately long political career. He has horrible angry-grandpa opinions, except he also happens to have the power to write Florida's laws. He is as dangerous as he is embarrassing.

Baxley was in the news again recently, after he tried to claim that abortions are killing Western European society (they're not). He used outright white-supremacist rhetoric that can pretty much

verbatim be found on neo-Nazi forums. And when he got called out about it, he doubled down and refused to apologize.

Is this very stupid and offensive? Certainly! But it's also the Dennis Baxley way. Here's a rundown of the dumbest stuff he's said while also being in charge of our laws.

1. He opposed a memorial to slavery victims because he didn't want to "celebrate defeat."

Via the *Miami Herald*:

House Democrats and members of the legislative black caucus are offended and irate after a conservative Senate committee chairman said Friday the reason he didn't hear a bill to create the first slavery memorial in Florida was because he didn't want to "celebrate defeat."

"I would rather celebrate overcoming the heartbreak of slavery. I wouldn't want to build a memorial to child abuse; I wouldn't want to build a memorial to sexual abuse," Ocala Republican Sen. Dennis Baxley told the *Herald/Times* for a story that was published online midday Friday. "I have a discomfort about memorializing slavery. ... I would like to take it in a more positive direction than a memorial to slavery."

His comments came as the House voted unanimously that day — with roaring applause — to build the Florida Slavery Memorial near the Capitol in Tallahassee. Despite the House support, the proposal stalled in the Senate because Baxley had what another senator described as a "philosophical objection" to the concept.

2. He said elderly residents at a nursing home who died after Hurricane Irma would have died soon anyway.

As of this morning, 14 elderly people have died from heat exposure in a negligently run Hollywood, Florida nursing home after Hurricane Irma shorted out the air conditioner there, a tragedy that the State of Florida could easily have prevented.

Baxley could use his power as a lawmaker to force state nursing homes to, say, buy backup generators or submit to extra inspections. Ah, screw that. Why do his job, legislate, and try to fix societal problems if those geezers would have just keeled over next week anyway?

"Look at the population," Baxley said yesterday, according to a news release the Florida Senate Democrats circulated today. "You're dealing with the 90-somethings. Some of these deaths would naturally occur, storm or no storm. Eventually, everyone who was in that nursing home will die. But we don't need to attribute those all to the storm and bad policy."

Baxley's remarkably cruel comments would merit a tongue-lashing at a Sunday family dinner. But they're exponentially worse in context: He was speaking yesterday at a meeting of the State Senate's Health and Human Services Appropriations Subcommittee.

3. He thinks we shouldn't ban guns to stop mass shootings because we don't ban spoons to combat obesity.

From *Vice News*:

Florida state senator **@dennisbaxley** on banning AR-15s: "Spoons are used to eat stuff to kill yourself with obesity, but we're not picking up spoons to get rid of obesity."

Watch the rest here: <https://t.co/yrOIETQhfA> pic.twitter.com/pmCrhJgjcH
— EKL (@ericakland) **February 21, 2018**

4. He said he was attending a pro-Confederate meetup to somehow denounce racism:

Save Southern Heritage operates chapters in multiple states, and one member who lives in Virginia said on Facebook that he attended the "Unite the Right" rally over the weekend.

Despite the obvious racism and tacit support for violence by the group online, Florida state Sen. Dennis Baxley — who tried to block a monument to the victims of slavery in Florida earlier this year — is scheduled to appear at a Save Southern Heritage Florida banquet in Temple Terrace, Florida, September 2. Baxley is scheduled to participate in a panel discussion about the alleged "War on the South" alongside Orlando-area radio host Doug Guetzloe and black Confederate flag supporter H.K. Edgerton. Tickets cost \$29.50 and include a three-course fried chicken, salmon, and pasta dinner.

Reached by phone, Baxley confirmed he will indeed attend the banquet but said he'll speak to "condemn racism, bigotry, and violence." However, he said that he does not believe Confederate monuments should be taken down and that removing Confederate iconography is actually what triggers racist violence.

5. **And he believes abortions are killing Western European society:**

Baxley went on WLRN to talk about abortion, since Georgia, Alabama, and other states recently passed nightmarish anti-abortion restrictions and Baxley himself had sponsored a similar anti-choice bill this year that died before becoming law. But Baxley, for some bizarre and entirely in-character reason, justified his anti-abortion stance by echoing straight-up white-supremacist talking points about Western European birthrates.

WLRN's recap states:

“When you get a birth rate less than 2 percent, that society is disappearing,” he said of Western Europe. “And it’s being replaced by folks that come behind them and immigrate, don’t wish to assimilate into that society and they do believe in having children. So you see that there are long range impacts to your society when the answer is to exterminate.”

As *Orlando Weekly's* Colin Wolf noted yesterday, this is factual nonsense in addition to being racist nonsense. Abortion rates don't have any correlation with birth rates — birth rates in the United States are dropping, sure, but they are dropping while rates of abortion are also falling.

But the bigger issue here is the racism. A key component of white-supremacist ideology is the notion that the white, Western European "race" will ultimately be "replaced" by immigrants of color who will take over and essentially exterminate white people. White nationalists refer to this as "replacement theory" or "white genocide."



THE UNITED STATES ATTORNEY'S OFFICE
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U.S. Attorney's Office

Northern District of Florida

FOR IMMEDIATE RELEASE

Wednesday, December 7, 2022

Florida State Representative Indicted For Wire Fraud, Money Laundering, And Making False Statements

GAINESVILLE, FLORIDA – A federal grand jury has returned a six-count indictment against Joseph Harding, 35, of Williston, Florida. The indictment was announced by Jason R. Coody, United States Attorney for the Northern District of Florida.

The Indictment alleges that between December 1, 2020, and March 1, 2021, Harding committed two acts of wire fraud by participating in a scheme to defraud the Small Business Administration (SBA) and for obtaining coronavirus-related small business loans by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme, caused wire communications to be transmitted in interstate commerce. The Indictment alleges that Harding made and caused to be made false and fraudulent SBA Economic Injury Disaster Loan (EIDL) applications, and made false representations in supporting loan documentation, in the names of dormant business entities, submitted to the SBA. The Indictment further alleges that Harding obtained fraudulently created bank statements for one of the dormant business entities which were used as supporting documentation for one of his fraudulent EIDL loan applications. By this conduct, the indictment alleges that Harding fraudulently obtained and attempted to obtain more than \$150,000 in funds from the SBA to which he was not entitled. Harding is also charged with two counts of engaging in monetary transactions with funds derived from unlawful activity related to his transfer of the fraudulently obtained EIDL proceeds into two bank accounts, and two counts of making false statements to the SBA.

Trial for Harding is scheduled for Wednesday, January 11, 2023, at 8:30 a.m., at the United States Courthouse in Gainesville, Florida, before the Honorable United States District Judge Allen Winsor.

The maximum terms of imprisonment for the offenses are as follows:

- 20 years: Wire Fraud
- 10 years: Money Laundering
- 5 years: Making False Statements

The investigation was jointly conducted by the Federal Bureau of Investigation, the Internal Revenue Service-Criminal Investigation, the Federal Deposit Insurance Corporation (FDIC) Office of Inspector General, and the Small Business Administration (SBA) Office of Inspector General. The case is being prosecuted by Assistant United States Attorneys Justin M. Keen and David P. Byron.

An indictment is merely an allegation by a grand jury that a defendant has committed a violation of federal criminal law and is not evidence of guilt. All defendants are presumed innocent and entitled to a fair trial, during which it will be the government's burden to prove guilt beyond a reasonable doubt.

The United States Attorney's Office for the Northern District of Florida is one of 94 offices that serve as the nation's principal litigators under the direction of the Attorney General. To access public court documents online, please visit the [U.S. District Court for the Northern District of Florida](https://www.uscourts.gov/uscourts/ndfl) website. For more information about the United States Attorney's Office, Northern District of Florida, visit <http://www.justice.gov/usao/fln/index.html>.

Attachment(s):

[Download press_release_-_harding.pdf](#)

Topic(s):

Financial Fraud

Component(s):

[USAO - Florida, Northern](#)

Contact:

United States Attorney's Office

Northern District of Florida

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Updated December 7, 2022

NEWS

Joe Harding, behind Florida 'Don't Say Gay' bill, resigns after indictment

By **Matthew Sedacca**

December 10, 2022 11:10am Updated



Rep. Harding said he wanted what was best for Floridians.

AP

MORE ON: *FLORIDA*



Trump tells Jews 'to be loyal' — with no mention of Kanye, Nick Fuentes dinner

The Florida Republican lawmaker who sponsored the state's controversial "Don't Say Gay" bill resigned this week after being **indicted on federal fraud charges** related to COVID-19 relief funds.

State Rep. Joe Harding stepped down Thursday after an indictment was unsealed the day before, alleging that the 35-year-old conservative legislator from Ocala applied for roughly \$150,000 in COVID-19 relief loans through the Small Business Administration using two defunct companies.

In announcing his resignation, Harding, who was elected to office in 2020, said that he wanted what's best for Floridians, **Politico reported**.

"Today, I am resigning from my position for the same two reasons: I love people, and I love Florida," he wrote in a **now-unavailable Facebook post**. "I believe in Floridians and want what is best for them, and I believe their leaders need not be encumbered by distractions that are mine alone."

Harding faces up to 35 years in prison for two counts of wire fraud, two counts of engaging in monetary transactions with funds derived from unlawful activity, and two counts of making false statements to the Small Business Administration related to the scheme, according to the **US Attorney for the Northern District of Florida**.



Protestors against the controversial “Don’t Say Gay” bill in Florida this spring.

Getty Images

Harding famously sponsored the state's controversial Parental Rights in Education law.

AFP via Getty Images

The former legislator pleaded not guilty to the allegations in a hearing on Tuesday and claimed he had repaid the loans. He has a trial date set for Jan. 11.

Harding famously sponsored the state's controversial Parental Rights in Education law, ridiculed by critics as the "Don't Say Gay" bill, which **sparked national protests**. The legislation, which Gov. Ron DeSantis **signed into law** in March, bans any classroom discussion surrounding sexual orientation or gender identity until the third grade in public schools.

FILED UNDER **FLORIDA** **LEGISLATURE** **LGBTQIA+** **REPUBLICANS** 12/10/22
, _____ , _____ , _____ , _____

READ NEXT **House GOP will 'roll out red carpet' to Elon Musk to testi...**

1 A bill to be entitled
2 An act relating to parental rights in education;
3 amending s. 1001.42, F.S.; requiring district school
4 boards to adopt procedures that comport with certain
5 provisions of law for notifying a student's parent of
6 specified information; requiring such procedures to
7 reinforce the fundamental right of parents to make
8 decisions regarding the upbringing and control of
9 their children in a specified manner; prohibiting the
10 procedures from prohibiting a parent from accessing
11 certain records; providing construction; prohibiting a
12 school district from adopting procedures or student
13 support forms that prohibit school district personnel
14 from notifying a parent about specified information or
15 that encourage or have the effect of encouraging a
16 student to withhold from a parent such information;
17 prohibiting school district personnel from
18 discouraging or prohibiting parental notification and
19 involvement in critical decisions affecting a
20 student's mental, emotional, or physical well-being;
21 providing construction; prohibiting classroom
22 discussion about sexual orientation or gender identity
23 in certain grade levels or in a specified manner;
24 requiring certain training developed or provided by a
25 school district to adhere to standards established by

26 the Department of Education; requiring the department
27 to review and update, as necessary, specified
28 materials by a certain date; requiring school
29 districts to notify parents of healthcare services and
30 provide opportunity to consent or decline such
31 services; requiring school districts to obtain
32 parental permission before administering questionnaire
33 or health screening form; authorizing a parent to
34 bring an action against a school district to obtain a
35 declaratory judgment that a school district procedure
36 or practice violates certain provisions of law;
37 providing for the additional award of injunctive
38 relief, damages, and reasonable attorney fees and
39 court costs to certain parents; providing an effective
40 date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Paragraph (c) is added to subsection (8) of
45 section 1001.42, Florida Statutes, to read:

46 1001.42 Powers and duties of district school board.—The
47 district school board, acting as a board, shall exercise all
48 powers and perform all duties listed below:

49 (8) STUDENT WELFARE.—

50 (c)1. In accordance with the rights of parents enumerated

51 in ss. 1002.20 and 1014.04, adopt procedures for notifying a
52 student's parent if there is a change in the student's services
53 or monitoring related to the student's mental, emotional, or
54 physical health or well-being and the school's ability to
55 provide a safe and supportive learning environment for the
56 student. The procedures must reinforce the fundamental right of
57 parents to make decisions regarding the upbringing and control
58 of their children by requiring school district personnel to
59 encourage a student to discuss issues relating to his or her
60 well-being with his or her parent or to facilitate discussion of
61 the issue with the parent. The procedures may not prohibit
62 parents from accessing any of their student's education and
63 health records created, maintained, or used by the school
64 district, as required by s. 1002.22(2).

65 2. A school district may not adopt procedures or student
66 support forms that prohibit school district personnel from
67 notifying a parent about his or her student's mental, emotional,
68 or physical health or well-being, or a change in related
69 services or monitoring, or that encourage or have the effect of
70 encouraging a student to withhold from a parent such
71 information. School district personnel may not discourage or
72 prohibit parental notification of and involvement in critical
73 decisions affecting a student's mental, emotional, or physical
74 health or well-being. This subparagraph does not prohibit a
75 school district from adopting procedures that permit school

76 personnel to withhold such information from a parent if a
77 reasonably prudent person would believe that disclosure would
78 result in abuse, abandonment, or neglect, as those terms are
79 defined in s. 39.01.

80 3. Classroom instruction by school personnel or third
81 parties on sexual orientation or gender identity may not occur
82 in kindergarten through grade 3 or in a manner that is not age-
83 appropriate or developmentally appropriate for students in
84 accordance with state standards.

85 4. Student support services training developed or provided
86 by a school district to school district personnel must adhere to
87 student services guidelines, standards, and frameworks
88 established by the Department of Education.

89 5. At the beginning of the school year, each school
90 district shall notify parents of each healthcare service offered
91 at their student's school and the option to withhold consent or
92 decline any specific service. Parental consent to a health care
93 service does not waive the parent's right to access his or her
94 student's educational or health records or to be notified about
95 a change in his or her student's services or monitoring as
96 provided by this paragraph.

97 6. Prior to administering a student well-being
98 questionnaire or health screening form to a student in
99 kindergarten through grade 3, the school district must provide
100 the questionnaire or health screening form to the parent and

PCS for CS/HB 1557

2022

101 obtain the permission of the parent.

102 7. A parent of a student may bring an action against a
103 school district to obtain a declaratory judgment that a school
104 district procedure or practice violates this paragraph and seek
105 injunctive relief. A court may award damages and shall award
106 reasonable attorney fees and court costs to a parent who
107 receives declaratory or injunctive relief.

108 Section 2. By June 30, 2023, the Department of Education
109 shall review and update, as necessary, school counseling
110 frameworks and standards; educator practices and professional
111 conduct principles; and any other student services personnel
112 guidelines, standards, or frameworks in accordance with the
113 requirements of this act.

114 Section 3. This act shall take effect July 1, 2022.

1 A bill to be entitled
2 An act relating to parental rights in education;
3 amending s. 1001.42, F.S.; requiring district school
4 boards to adopt procedures that comport with certain
5 provisions of law for notifying a student's parent of
6 specified information; requiring such procedures to
7 reinforce the fundamental right of parents to make
8 decisions regarding the upbringing and control of
9 their children in a specified manner; prohibiting the
10 procedures from prohibiting a parent from accessing
11 certain records; providing construction; prohibiting a
12 school district from adopting procedures or student
13 support forms that require school district personnel
14 to withhold from a parent specified information or
15 that encourage or have the effect of encouraging a
16 student to withhold from a parent such information;
17 providing an exception; prohibiting school district
18 personnel from discouraging or prohibiting parental
19 notification and involvement in critical decisions
20 affecting a student's mental, emotional, or physical
21 well-being; prohibiting a school district from
22 encouraging classroom discussion about sexual
23 orientation or gender identity in primary grade levels
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2022

26 declaratory judgment that a school district procedure
27 or practice violates certain provisions of law;
28 providing for the additional award of injunctive
29 relief, damages, and reasonable attorney fees and
30 court costs to certain parents; requiring certain
31 training developed or provided by a school district to
32 adhere to standards established by the Department of
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35 date; providing an effective date.

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53 of their children by requiring school district personnel to
54 encourage a student to discuss issues relating to his or her
55 well-being with his or her parent or to seek permission to
56 discuss or facilitate discussion of the issue with the parent.
57 The procedures must comply with s. 1002.22(2) and may not
58 prohibit a parent from accessing any of his or her minor child's
59 education records created, maintained, or used by the school
60 district. This paragraph does not limit or alter any obligation
61 of school district personnel to report suspected abuse,
62 abandonment, or neglect, as those terms are defined in s. 39.01.

63 2. A school district may not adopt procedures or student
64 support forms that require school district personnel to withhold
65 from a parent information about his or her student's mental,
66 emotional, or physical health or well-being, or a change in
67 related services or monitoring, or that encourage or have the
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70 that such disclosure would result in abuse, abandonment, or
71 neglect, as those terms are defined in s. 39.01. School district
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74 mental, emotional, or physical health or well-being.

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76 discussion about sexual orientation or gender identity in
77 primary grade levels or in a manner that is not age-appropriate
78 or developmentally appropriate for students.

79 4. A parent of a student may bring an action against a
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81 district procedure or practice violates this paragraph and seek
82 injunctive relief. A court may award damages and shall award
83 reasonable attorney fees and court costs to a parent who
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85 5. Student support services training developed or provided
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By Senator Baxley

12-01508B-22

20221834__

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3. A school district may not encourage classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate or developmentally appropriate for students.

4. A parent of a student may bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates this paragraph and seek injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

5. Student support services training developed or provided by a school district to school district personnel must adhere to student services guidelines, standards, and frameworks

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93 guidelines, standards, or frameworks in accordance with the
94 requirements of this act.

95 Section 3. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1557 Parental Rights in Education

SPONSOR(S): Harding

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education & Employment Committee		Wolff	Hassell
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill restricts discussions of sexual orientation or gender identity to only those that are age-appropriate and developmentally appropriate for students while prohibiting a school district from encouraging discussions of these topics in primary grades.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents’ constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children’s best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent’s constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id. See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

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state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²³

Florida School Districts Maintain Policies that Exclude Parents

While the Parents' Bill of Rights provides that important information relating to a minor child should not be withheld from his or her parent while the minor child is in the custody of the school district,²⁴ multiple school districts in Florida maintain policies that exclude parents from discussions and decisions on sensitive topics relating to students.²⁵ In addition, at least one Florida school district is currently involved in litigation with a parent after allegedly withholding information from the parent regarding their student's gender transition at school.²⁶

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1014.02(1), F.S.

²⁵ For example, the LGBTQ+ Critical Support Guides available on the Broward County Public School and the School District of Palm Beach County webpages prohibit disclosure of information about a student's sexual orientation or gender identity to a parent. See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf.

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq->

Effect of Proposed Changes

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent or to seek permission to discuss or facilitate a discussion with the parent.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

The bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student and specifies that it does not limit the duty of school district personnel to report suspicion of such acts to the Department of Children and Families.

Additionally, the bill prohibits a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate or developmentally appropriate for students.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles;
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that require school district personnel to withhold from a parent specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; providing an exception; prohibiting school

district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; prohibiting a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a specified manner; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1557 (2022)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER _____

Committee/Subcommittee hearing bill: Education & Employment
Committee

Representative Garrison offered the following:

Amendment (with title amendment)

Remove lines 63-74 and insert:

2. A school district may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. This subparagraph does not prohibit a

395779 - h1557 line 63.docx

Published On: 1/19/2022 7:09:34 PM

Amendment No. 1

17 school district from adopting procedures that permit school
18 personnel to withhold such information from a parent if a
19 reasonably prudent person would believe that disclosure would
20 result in abuse, abandonment, or neglect, as those terms are
21 defined in s. 39.01.

22 -----
23
24 **T I T L E A M E N D M E N T**

25 Remove lines 17-21 and insert:
26 prohibiting school district personnel from discouraging or
27 prohibiting parental notification and involvement in critical
28 decisions affecting a student's mental, emotional, or physical
29 well-being; providing an exception; prohibiting a school
30 district from

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ADOPTED _____ (Y/N)

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ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER _____

Committee/Subcommittee hearing bill: Education & Employment
Committee

Representative Harding offered the following:

Amendment (with title amendment)

Remove lines 63-74 and insert:

2. A school district may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. This subparagraph does not prohibit a

875175 - h1557 line 63.docx

Published On: 1/19/2022 7:24:54 PM

Amendment No. 1

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28 decisions affecting a student's mental, emotional, or physical
29 well-being; providing an exception; prohibiting a school
30 district from

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1557 Parental Rights in Education
SPONSOR(S): Education & Employment Committee, Harding
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education & Employment Committee	15 Y, 5 N, As CS	Wolff	Hassell
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill restricts discussions of sexual orientation or gender identity to only those that are age-appropriate and developmentally appropriate for students while prohibiting a school district from encouraging discussions of these topics in primary grades.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents’ constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children’s best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent’s constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

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state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

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In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

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The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

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- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
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- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
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In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

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²⁵ See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at

https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf; Miami-Dade County Public Schools, *2020-2021 Guidelines for Promoting Safe and Inclusive Schools*, p. 7, available at <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>;

Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Guidelines*, (Oct. 2018), p. 2, available at https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide*, pp. 11-12, available at <https://www.vcsedu.org/sites/default/files/department-files/Equity/VCS%20LGBTQ%20Support%20Guide%202020.pdf>;

and Hillsborough County Public Schools, *Creating Safe Schools for All Students*, p. 5, available at <https://www.lgba.org/wp-content/uploads/2019/12/lgbtq-resource-guide-1.pdf>.

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The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

The bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student and specifies that it does not limit the duty of school district personnel to report suspicion of such acts to the Department of Children and Families.

Additionally, the bill prohibits a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels²⁷ or in a manner that is not age-appropriate or developmentally appropriate for students.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles;
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq-guide/6342695001/> (last visited Jan 17, 2022). The Leon County School District LGBTQ guide previously did not require disclosure of information to parents but has been taken down from the website and is undergoing review by the district. *Id.*

²⁷ In the U.S., primary grades customarily include the first three grade levels. In Florida, teacher certification in prekindergarten/primary education covers instruction provided to students age 3 through grade 3. Rule 6A -4.0142, F.A.C.

make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that require school district personnel to withhold from a parent specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; providing an exception; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; prohibiting a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a specified manner; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education.

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

STORAGE NAME: h1557a.EEC

DATE: 1/21/2022

PAGE: 6

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 20, 2022, the Education & Employment Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that school district procedures may permit the withholding of information otherwise required to be disclosed to a parent if a reasonably prudent person would believe that such disclosure would subject the parent's student to abuse, abandonment, or neglect, as those terms are defined in law.

The bill analysis is drafted to the committee substitute adopted by the Education & Employment Committee.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1557 Parental Rights in Education

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Wolff	Kramer

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.

At the beginning of each school year, a school district must notify parents of all health care services offered at their student's school and provide the parent the opportunity to individually consent to, or decline, each service. Additionally, schools may not administer a questionnaire or health screening form to a student in kindergarten through grade 3 without first receiving consent from the student's parent.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents’ constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children’s best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent’s constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²³

Florida School Districts Maintain Policies that Exclude Parents

While the Parents' Bill of Rights provides that important information relating to a minor child should not be withheld from his or her parent while the minor child is in the custody of the school district,²⁴ multiple school districts in Florida maintain policies that exclude parents from discussions and decisions on sensitive topics relating to students.²⁵ In addition, at least one Florida school district is currently

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1014.02(1), F.S.

²⁵ See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at

https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf; Miami-Dade County Public Schools, *2020-2021 Guidelines for Promoting Safe and Inclusive Schools*, p. 7, available at <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>;

Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Guidelines*, (Oct. 2018), p. 2, available at https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide*, pp. 11-12, available at <https://www.vcsedu.org/sites/default/files/department-files/Equity/VCS%20LGBTQ%20Support%20Guide%202020.pdf>;

and Hillsborough County Public Schools, *Creating Safe Schools for All Students*, p. 5, available at <https://www.lgba.org/wp-content/uploads/2019/12/lgbtq-resource-guide-1.pdf>.

involved in litigation with a parent after allegedly withholding information from the parent regarding their student's gender transition at school.²⁶

Parental Consent for Healthcare Services in Schools

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.²⁷ The state's interest diminishes as the severity of an affliction and the likelihood of death increase.²⁸

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.²⁹

In 2021,³⁰ the Parents' Bill of Rights established parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:³¹

- A health care practitioner,³² or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider³³ may not allow a medical procedure to be performed on a minor child in its facility.

It is a first-degree misdemeanor to violate these parental consent requirements, subject to a fine of up to \$1,000 and imprisonment of up to one year,³⁴ and health care practitioners may also be subject to disciplinary action³⁵ for such violations.³⁶

Medical Treatment without Parental Consent

Physicians, paramedics, emergency medical technicians, or other emergency medical services personnel are authorized to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor.³⁷ Even in emergency situations, medical treatment can only be provided without parental consent if:³⁸

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq-guide/6342695001/> (last visited Jan 17, 2022). The Leon County School District LGBTQ guide previously did not require disclosure of information to parents but has been taken down from the website and is undergoing review by the district. *Id.*

²⁷ *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).

²⁸ *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994).

²⁹ *Id.*

³⁰ Chapter 2021-199, F.S.

³¹ Section 1014.06(1)-(2), F.S.

³² Section 456.001, F.S.

³³ "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

³⁴ Section 1014.06(5), F.S.

³⁵ Section 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. Section 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations. *See e.g.* rule 64B9-8.006, F.A.C. (Board of Nursing rule including discipline for violations of s. 1014.06, F.S.).

³⁶ Section 1014.06(5), F.S.

³⁷ Section 743.064, F.S.

³⁸ Section 743.064(2), F.S.

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.³⁹

Current law establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions.⁴⁰ Specifically, the following people may consent, in this order:⁴¹

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;⁴²
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,⁴³ then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise:⁴⁴

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility⁴⁵ or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.⁴⁶

The Parents' Bill of Rights consent requirements specifically do not apply to health care related to an abortion.⁴⁷ Additionally, the Parents' Bill of Rights created an exception for parental consent requirements for a clinical laboratory, unless the services provided are delivered through a direct encounter with the minor at the clinical laboratory facility.⁴⁸

School District Compliance with Parental Consent for Health Care Services

³⁹ Section 743.064(3), F.S.

⁴⁰ Section 743.0645, F.S.

⁴¹ Section 746.0645(2), F.S.

⁴² A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

⁴³ Specifically, under chs. 39, 984, or 985, F.S.

⁴⁴ Section 743.0645, F.S.

⁴⁵ Section 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.

⁴⁶ Section 743.0645(2)-(4), F.S.

⁴⁷ Section 1014.06(3), F.S. Abortions in Florida are exclusively governed by ch. 390, F.S.

⁴⁸ Section 1014.06(4), F.S.

Public schools in Florida offer a wide range of health care services to students ranging from treatment of minor cuts and scrapes to vision, hearing, scoliosis, and other screenings to the administration of immunizations and emotional and mental health counseling.⁴⁹ To comply with the requirement for parental consent when providing health care services to minors, school districts have developed parental consent forms.⁵⁰ In some instances, parents are provided the opportunity to consent individually to services provided at schools.⁵¹ However, some school district consent forms provide for a blanket consent to all health care services provided through the school district.⁵²

Effect of Proposed Changes

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to their well-being with their parent or facilitate a discussion with the parent.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. However, the bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student.

⁴⁹ See Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵⁰ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵¹ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵² See Brevard Public Schools, *Parental Consent for Healthcare*, available at <https://fl02201431.schoolwires.net/site/handlers/filedownload.ashx?moduleinstanceid=10161&dataid=80765&FileName=Parental%20Consent%20for%20Healthcare.pdf>; School District of Osceola County, *Student Health Information*, Feb. 2020, available at <https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/2370/Health%20Form.pdf>; Sarasota County Schools, *Parental Consent for Health Services 2021-2022*, July 2021, available at <https://www.sarasotacountyschools.net/site/handlers/filedownload.ashx?moduleinstanceid=3465&dataid=85414&FileName=Parental%20Consent%20for%20Health%20Services%202021-2022.pdf>.

Additionally, the bill prohibits classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

The bill requires school districts, at the beginning of each school year, to notify parents of each health care service available to their student through the school district and permit parents to consent to, or decline, each service individually. The bill also requires school districts to obtain parental consent before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3. A copy of the questionnaire or health screening form must be provided to the parent in advance.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles; and
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that prohibit school district personnel from notifying a parent about specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; providing construction; prohibiting classroom discussion about sexual orientation or gender identity in certain grade levels or in a specified manner; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education; requiring the department to review and update, as necessary, specified materials by a certain date; requiring school districts to notify parents of healthcare services and provide opportunity to consent or decline such services; requiring school districts to obtain parental permission before administering questionnaire or health screening form; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents.

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1557 Parental Rights in Education

SPONSOR(S): Judiciary Committee, Education & Employment Committee, Harding and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education & Employment Committee	15 Y, 5 N, As CS	Wolff	Hassell
2) Judiciary Committee	13 Y, 7 N, As CS	Wolff	Kramer

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.

At the beginning of each school year, a school district must notify parents of all health care services offered at their student's school and provide the parent the opportunity to individually consent to, or decline, each service. Additionally, schools may not administer a questionnaire or health screening form to a student in kindergarten through grade 3 without first receiving consent from the student's parent.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are 'persons' under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida's constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their child ren would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²³

Florida School Districts Maintain Policies that Exclude Parents

While the Parents' Bill of Rights provides that important information relating to a minor child should not be withheld from his or her parent while the minor child is in the custody of the school district,²⁴ multiple school districts in Florida maintain policies that exclude parents from discussions and decisions on sensitive topics relating to students.²⁵ In addition, at least one Florida school district is currently

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1014.02(1), F.S.

²⁵ See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at

https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf; Miami-Dade County Public Schools, *2020-2021 Guidelines for Promoting Safe and Inclusive Schools*, p. 7, available at <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>;

Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Guidelines*, (Oct. 2018), p. 2, available at https://www.sarasotacountysschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide*, pp. 11-12, available at <https://www.vcsedu.org/sites/default/files/department-files/Equity/VCS%20LGBTQ%20Support%20Guide%202020.pdf>;

and Hillsborough County Public Schools, *Creating Safe Schools for All Students*, p. 5, available at <https://www.lgba.org/wp-content/uploads/2019/12/lgbtq-resource-guide-1.pdf>.

involved in litigation with a parent after allegedly withholding information from the parent regarding their student's gender transition at school.²⁶

Parental Consent for Healthcare Services in Schools

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.²⁷ The state's interest diminishes as the severity of an affliction and the likelihood of death increase.²⁸

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.²⁹

In 2021,³⁰ the Parents' Bill of Rights established parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:³¹

- A health care practitioner,³² or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider³³ may not allow a medical procedure to be performed on a minor child in its facility.

It is a first-degree misdemeanor to violate these parental consent requirements, subject to a fine of up to \$1,000 and imprisonment of up to one year,³⁴ and health care practitioners may also be subject to disciplinary action³⁵ for such violations.³⁶

Medical Treatment without Parental Consent

Physicians, paramedics, emergency medical technicians, or other emergency medical services personnel are authorized to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor.³⁷ Even in emergency situations, medical treatment can only be provided without parental consent if:³⁸

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq-guide/6342695001/> (last visited Jan 17, 2022). The Leon County School District LGBTQ guide previously did not require disclosure of information to parents but has been taken down from the website and is undergoing review by the district. *Id.*

²⁷ *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).

²⁸ *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994).

²⁹ *Id.*

³⁰ Chapter 2021-199, F.S.

³¹ Section 1014.06(1)-(2), F.S.

³² Section 456.001, F.S.

³³ "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

³⁴ Section 1014.06(5), F.S.

³⁵ Section 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. Section 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations. *See e.g.* rule 64B9-8.006, F.A.C. (Board of Nursing rule including discipline for violations of s. 1014.06, F.S.).

³⁶ Section 1014.06(5), F.S.

³⁷ Section 743.064, F.S.

³⁸ Section 743.064(2), F.S.

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.³⁹

Current law establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions.⁴⁰ Specifically, the following people may consent, in this order:⁴¹

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;⁴²
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,⁴³ then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise:⁴⁴

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility⁴⁵ or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.⁴⁶

The Parents' Bill of Rights consent requirements specifically do not apply to health care related to an abortion.⁴⁷ Additionally, the Parents' Bill of Rights created an exception for parental consent requirements for a clinical laboratory, unless the services provided are delivered through a direct encounter with the minor at the clinical laboratory facility.⁴⁸

School District Compliance with Parental Consent for Health Care Services

³⁹ Section 743.064(3), F.S.

⁴⁰ Section 743.0645, F.S.

⁴¹ Section 746.0645(2), F.S.

⁴² A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

⁴³ Specifically, under chs. 39, 984, or 985, F.S.

⁴⁴ Section 743.0645, F.S.

⁴⁵ Section 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.

⁴⁶ Section 743.0645(2)-(4), F.S.

⁴⁷ Section 1014.06(3), F.S. Abortions in Florida are exclusively governed by ch. 390, F.S.

⁴⁸ Section 1014.06(4), F.S.

Public schools in Florida offer a wide range of health care services to students ranging from treatment of minor cuts and scrapes to vision, hearing, scoliosis, and other screenings to the administration of immunizations and emotional and mental health counseling.⁴⁹ To comply with the requirement for parental consent when providing health care services to minors, school districts have developed parental consent forms.⁵⁰ In some instances, parents are provided the opportunity to consent individually to services provided at schools.⁵¹ However, some school district consent forms provide for a blanket consent to all health care services provided through the school district.⁵²

Effect of Proposed Changes

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to their well-being with their parent or facilitate a discussion with the parent.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. However, the bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student.

⁴⁹ See Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵⁰ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵¹ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵² See Brevard Public Schools, *Parental Consent for Healthcare*, available at <https://fl02201431.schoolwires.net/site/handlers/filedownload.ashx?moduleinstanceid=10161&dataid=80765&FileName=Parental%20Consent%20for%20Healthcare.pdf>; School District of Osceola County, *Student Health Information*, Feb. 2020, available at <https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/2370/Health%20Form.pdf>; Sarasota County Schools, *Parental Consent for Health Services 2021-2022*, July 2021, available at <https://www.sarasotacountyschools.net/site/handlers/filedownload.ashx?moduleinstanceid=3465&dataid=85414&FileName=Parental%20Consent%20for%20Health%20Services%202021-2022.pdf>.

Additionally, the bill prohibits classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

The bill requires school districts, at the beginning of each school year, to notify parents of each health care service available to their student through the school district and permit parents to consent to, or decline, each service individually. The bill also requires school districts to obtain parental consent before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3. A copy of the questionnaire or health screening form must be provided to the parent in advance.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles; and
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that prohibit school district personnel from notifying a parent about specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; providing construction; prohibiting classroom discussion about sexual orientation or gender identity in certain grade levels or in a specified manner; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education; requiring the department to review and update, as necessary, specified materials by a certain date; requiring school districts to notify parents of healthcare services and provide opportunity to consent or decline such services; requiring school districts to obtain parental permission before administering questionnaire or health screening form; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents.

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2022, the Judiciary Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it:

- Clarified that school personnel should facilitate discussion about a student's mental, emotional, or physical well-being with a parent.
- Removed the requirement to seek student permission to discuss the student's well-being with a parent.
- Removed language prohibiting school districts from encouraging classroom discussions in "primary grades" and limited the prohibition to classroom instruction in kindergarten through grade 3, either by school personnel or by third parties.
- Specified that school districts must obtain parental consent for any health care service provided at schools.

- Required parent consent before a school administers a well-being questionnaire or health screening form to a student in kindergarten through grade 3.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/HB 1557

INTRODUCER: Judiciary Committee; Education & Employment Committee; and Representative Harding and others

SUBJECT: Parental Rights in Education

DATE: February 25, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Palazesi/Grace	Sadberry	AP	Favorable

I. Summary:

CS/CS/HB 1557 specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.

At the beginning of each school year, a school district must notify parents of all health care services offered at their student's school and provide the parent the opportunity to individually consent to, or decline, each service. Additionally, schools may not administer a questionnaire or health screening form to a student in kindergarten through grade 3 without first receiving consent from the student's parent.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.³

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 US 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); See *Wisconsin v. Yoder*, 406, U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eight grade violates the parents' constitutional right to direct the religious upbringing of their children); See *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.⁶

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizen’s right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a state’s effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents’ Bill of Rights

Overview

In 2021,¹² the legislature created the Parents’ Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child’s health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents’ Rights Related to Education of their Child

The Parents’ Bill of Rights enumerates several rights of a parent, such as:

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent’s approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.¹⁶

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.
- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.¹⁹

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system. Such policies must provide for:

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.

- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum. 20

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²¹ A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²²

Parental Consent for Healthcare Services in Schools

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.²³ The state's interest diminishes as the severity of an affliction and the likelihood of death increase:²⁴

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.²⁵

In 2021,²⁶ the Parents' Bill of Rights established parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:²⁷

- A health care practitioner,²⁸ or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider²⁹ may not allow a medical procedure to be performed on a minor child in its facility.

²⁰ Section 1014.05(1), F.S.

²¹ Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²² Section 1014.05(2), F.S.

²³ *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).

²⁴ *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994).

²⁵ *Id.*

²⁶ Chapter 2021-199, F.S.

²⁷ Section 1014.06(1)-(2), F.S.

²⁸ Section 456.001, F.S.

²⁹ "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

It is a first-degree misdemeanor to violate these parental consent requirements, subject to a fine of up to \$1,000 and imprisonment of up to one year,³⁰ and health care practitioners may also be subject to disciplinary action³¹ for such violations.³²

Medical Treatment without Parental Consent

Physicians, paramedics, emergency medical technicians, or other emergency medical services personnel are authorized to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor.³³ Even in emergency situations, medical treatment can only be provided without parental consent if:

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.³⁴

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.³⁵

Current law establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions.³⁶ Specifically, the following people may consent, in this order:³⁷

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;³⁸
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

³⁰ Section 1014.06(5), F.S.

³¹ Section 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. Section 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations. See e.g. rule 64B9-8.006, F.A.C. (Board of Nursing rule including discipline for violations of s. 1014.06, F.S.).

³² Section 1014.06(5), F.S.

³³ Section 743.064, F.S.

³⁴ Section 743.064(2), F.S.

³⁵ Section 743.064(3), F.S.

³⁶ Section 743.0645, F.S.

³⁷ Section 746.0645(2), F.S.

³⁸ A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,³⁹ then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise:⁴⁰

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility⁴¹ or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.⁴²

The Parents' Bill of Rights consent requirements specifically do not apply to health care related to an abortion.⁴³ Additionally, the Parents' Bill of Rights created an exception for parental consent requirements for a clinical laboratory, unless the services provided are delivered through a direct encounter with the minor at the clinical laboratory facility.⁴⁴

School District Compliance with Parental Consent for Health Care Services

Public schools in Florida offer a wide range of health care services to students ranging from treatment of minor cuts and scrapes to vision, hearing, scoliosis, and other screenings to the administration of immunizations and emotional and mental health counseling. To comply with the requirement for parental consent when providing health care services to minors, school districts have developed parental consent forms. In some instances, parents are provided the opportunity to consent individually to services provided at schools.⁴⁵ However, some school district consent forms provide for a blanket consent to all health care services provided through the school district.⁴⁶

³⁹ Specifically, under chs. 39, 984, or 985, F.S.

⁴⁰ Section 743.0645, F.S.

⁴¹ Section 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.

⁴² Section 743.0645(2)-(4), F.S.

⁴³ Section 1014.06(3), F.S. Abortions in Florida are exclusively governed by ch. 390, F.S.

⁴⁴ Section 1014.06(4), F.S.

⁴⁵ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁴⁶ See Brevard Public Schools, *Parental Consent for Healthcare*, available at <https://f102201431.schoolwires.net/site/handlers/filedownload.ashx?moduleinstanceid=10161&dataid=80765&FileName=Parental%20Consent%20for%20Healthcare.pdf>; School District of Osceola County, *Student Health Information*, Feb. 2020, available at <https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/2370/Health%20Form.pdf>; Sarasota County Schools, *Parental Consent for Health Services 2021-2022*, July 2021, available at

Special Magistrate

A special magistrate is a public officer belonging to the civil organization of the state, and invested with powers and functions which may be either judicial, legislative, or executive.⁴⁷

There is one instance in the education code establishing a special magistrate, to resolve differences relating to specific types of charter schools.⁴⁸ In such instance, the Commissioner of Education is required to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least 5 years' experience in administrative law. The special magistrate must hold hearings to determine facts relating to the dispute and to render a recommended decision for resolution to the State Board of Education (SBE). The special magistrate may administer oaths and issue subpoenas on behalf of the parties to the dispute or on his or her own behalf. Within 15 calendar days after the close of the final hearing, the special magistrate must transmit a recommended decision to the SBE and to the representatives of both parties. The SBE must approve or reject the recommended decision at its next regularly scheduled meeting that is more than 7 calendar days and no more than 30 days after the date the recommended decision is transmitted.⁴⁹

III. Effect of Proposed Changes:

This bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to their well-being with their parent or facilitate a discussion with the parent. However, the procedures may not prohibit parents from accessing any of their student's education and health records created, maintained, or used by the school district.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- Require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- Encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. However, the bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student.

<https://www.sarasotacountychools.net/site/handlers/filedownload.ashx?moduleinstanceid=3465&dataid=85414&FileName=Parental%20Consent%20for%20Health%20Services%202021-2022.pdf>.

⁴⁷ Black's Law Dictionary, *Magistrate*, <https://thelawdictionary.org/magistrate/> (last visited Feb. 25, 2022)

⁴⁸ Section 1002.333(11)(c), F.S.

⁴⁹ *Id.*

Additionally, the bill prohibits classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

The bill requires school districts, at the beginning of each school year, to notify parents of each health care service available to their student through the school district and permit parents to consent to, or decline, each service individually. However, the bill specifies that consent to a service does not waive the parent's right to access his or her student's educational or health records or to be notified about changes in services or monitoring. The bill also requires school districts to obtain parental consent before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3. A copy of the questionnaire or health screening form must be provided to the parent in advance.

The bill requires each school district to adopt procedures for a parent to notify the principal or designee of concerns regarding the provisions in the bill, and the process for resolving concerns within seven days of the complaint.

At a minimum the procedures must require that within 30 days after notification by the parent that the concern is unresolved, the district must either resolve the concern or provide a reason for not resolving the concern. If the concern is not resolved, a parent may:

- Request the Commissioner of Education to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least five years' experience in administrative law. The special magistrate must render a recommended decision for resolution to the State Board of Education (SBE) within 30 days after receipt of the request by the parent. The SBE must approve or reject the recommended decision at its next regularly scheduled meeting between 7 and 30 days after the recommendation. The costs of the special magistrate are the responsibility of the school district.
- Bring an action against the school district to obtain a declaratory judgment that the school district procedure or practice violates the provision in the bill and seek injunctive relief. A court may award damages and must award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

The bill requires each school district to adopt policies to notify parents of these complaint procedures. The bill also specifies that the actions established in the bill do not abridge or alter rights of action or remedies in equity already existing under the common law or general law.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education. The DOE is required to review and update, as necessary, by June 30, 2023, for compliance with the provisions of this bill, the following:

- School counseling frameworks and standards;
- Educator practices and professional conduct principles; and
- Other student services personnel guidelines, standards, or frameworks.

The bill has an effective date of July 1, 2022.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. School districts may need to adopt updated training materials based on the DOE review. The fiscal impact of these changes is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1001.42 of the Florida Statutes.

The bill creates an unnumbered section of Florida law.

IX. Additional Information:

- A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None

- B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

Floor Vote for

Bill Number: 1557

Date: Tuesday, March 08, 2022

Reading #: 3

Barcode #: NA

Sequence: 3

In the Chair: President Simpson

Floor Actions:

- Y

Albritton
- N

Ausley
- Y

Baxley
- Y

Bean
- N

Berman
- N

Book
- Y

Boyd
- N

Bracy
- N

Bradley
- N

Brandes
- Y

Brodeur
- Y

Broxson
- Y

Burgess
- N

Cruz
- Y

Diaz
- N

Farmer
- Y

Gainer
- Y

Garcia
- N

Gibson
- Y

Gruters
- Y

Harrell
- Y

Hooper
- Y

Hutson
- N

Jones
- Y

Mayfield
- Y

Passidomo
- Y

Perry
- N

Pizzo
- N

Polsky
- N

Powell
- Y

President Simpson
- Y

Rodrigues
- Y

Rodriguez
- N

Rouson
- Y

Stargel
- N

Stewart
- N

Taddeo
- N

Torres
- Y

Wright

Total Yeas: 22 Total Nays: 17 Total Abstained: 0 Total Missed: 0 Total Votes: 39

Amendment No.

CHAMBER ACTION

SenateHouse

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Representative Eskamani offered the following:

Amendment (with title amendment)

Between lines 110 and 111, insert:

8. A student whose school reveals their sexual orientation to the student's parent or guardian pursuant to this paragraph and causes irreparable harm to the student may bring an action against the Department of Education for injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a student who receives injunctive relief.

T I T L E A M E N D M E N T

138729

Approved For Filing: 2/18/2022 3:59:21 PM

Amendment No.

14 Remove line 40 and insert:
15 court costs to certain parents; authorizing certain
16 students to bring an action against the Department of
17 Education under certain circumstances; providing for
18 the award of damages, attorney fees, and court costs
19 to such students; requiring the

138729

Approved For Filing: 2/18/2022 3:59:21 PM

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Nixon offered the following:

Amendment

Remove line 79 and insert:
personnel to withhold such information from a parent if the
information would out a LGBTQ+ student without that student's
consent or a

178971

Approved For Filing: 2/18/2022 3:43:03 PM

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Driskell offered the following:

Amendment (with title amendment)

Remove line 110 and insert:

receives declaratory or injunctive relief. A court shall award
reasonable attorney fees and court costs to a school district
that is found to have not violated this paragraph.

T I T L E A M E N D M E N T

Remove line 40 and insert:

194533

Approved For Filing: 2/18/2022 3:30:24 PM

HOUSE AMENDMENT

Bill No. CS/CS/HB 1557 (2022)

Amendment No.

12 | court costs to certain parents; providing for the
13 | award of reasonable attorney fees and court costs to
14 | certain school districts; requiring the

194533

Approved For Filing: 2/18/2022 3:30:24 PM

Amendment No.

CHAMBER ACTION

SenateHouse

.

Representative Eskamani offered the following:

Amendment (with title amendment)

Between lines 110 and 111, insert:

8. To ensure that parents and legal guardians know how to discuss sexual orientation and gender identity with their children, the Department of Education, in consultation with Parents, Families, and Friends of Lesbians and Gays (PFLAG) and Gay, Lesbian, and Straight Education Network (GLSEN), must create a pamphlet focused on providing parents and legal guardians with information on how to talk to their children about sexual orientation and gender identity. The pamphlet must contain contact information for local LGBTQ+ focused

275051

Approved For Filing: 2/18/2022 3:54:10 PM

Amendment No.

14 organizations that can help with such conversations. Each school
15 district must annually provide the pamphlet to parents and legal
16 guardians and prominently display such pamphlets in the front
17 office of schools within the district.

18 -----
19
20 **T I T L E A M E N D M E N T**

21 Remove line 40 and insert:

22 court costs to certain parents; requiring the
23 Department of Education, in consultation with
24 specified organizations, to create a pamphlet;
25 providing requirements for such pamphlet; requiring
26 school district to annually distribute such pamphlet
27 to parents and legal guardians and prominently display
28 such pamphlets in certain schools; requiring the

275051

Approved For Filing: 2/18/2022 3:54:10 PM

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Smith, C. offered the following:

Amendment (with title amendment)

Between lines 46 and 47, insert:

Section 1. Paragraph (a) of subsection (2) of section
1003.46, Florida Statutes, is amended to read:

1003.46 Health education; instruction in acquired immune
deficiency syndrome.—

(2) Throughout instruction in acquired immune deficiency
syndrome, sexually transmitted diseases, or health education,
when such instruction and course material contains instruction
in human sexuality, a school shall:

588543

Approved For Filing: 2/18/2022 3:20:12 PM

Amendment No.

13 (a) Teach abstinence from sexual activity outside of
14 marriage as the expected standard for all school-age students
15 while teaching the benefits of monogamous heterosexual marriage.
16

17 -----

18 **T I T L E A M E N D M E N T**

19 Remove line 2 and insert:

20 An act relating to education; amending s.
21 1003.46, F.S.; revising the requirements for
22 certain health education instruction;

588543

Approved For Filing: 2/18/2022 3:20:12 PM

Amendment No.

CHAMBER ACTION

SenateHouse

.

Representative Woodson offered the following:

Amendment (with title amendment)

Remove line 87 and insert:

accordance with state standards. This subparagraph does not
apply to any discussion between a student who identifies as
transgender, gender non-conforming, non-binary, or otherwise
LGBTQ+ and their peers.

T I T L E A M E N D M E N T

Between lines 23 and 24, insert:

providing an exemption from such prohibition;

600607

Approved For Filing: 2/18/2022 3:32:04 PM

Amendment No.

CHAMBER ACTION

SenateHouse

.

Representative Jenne offered the following:

Amendment (with title amendment)

Remove lines 88-116 and insert:

4. At the beginning of the school year, each school district shall notify parents of each healthcare service offered at their student's school and the option to withhold consent or decline any specific service. Parental consent to a health care service does not waive the parent's right to access his or her student's educational or health records or to be notified about a change in his or her student's services or monitoring as provided by this paragraph.

634251

Approved For Filing: 2/18/2022 3:26:17 PM

Amendment No.

13 5. Before administering a student well-being questionnaire
14 or health screening form to a student in kindergarten through
15 grade 3, the school district must provide the questionnaire or
16 health screening form to the parent and obtain the permission of
17 the parent.

18 6. A parent of a student may bring an action against a
19 school district to obtain a declaratory judgment that a school
20 district procedure or practice violates this paragraph and seek
21 injunctive relief. A court may award damages and shall award
22 reasonable attorney fees and court costs to a parent who
23 receives declaratory or injunctive relief.

24 -----
25
26 **T I T L E A M E N D M E N T**

27 Remove lines 24-42 and insert:

28 requiring school districts to notify parents of
29 healthcare services and provide parents the
30 opportunity to consent or decline such services;
31 providing that a specified parental consent does not
32 wave certain parental rights; requiring school
33 districts to provide parents with certain
34 questionnaires or health screening forms and obtain
35 parental permission before administering such
36 questionnaires and forms; authorizing a parent to
37 bring an action against a school district to obtain a

634251

Approved For Filing: 2/18/2022 3:26:17 PM

Amendment No.

38 declaratory judgment that a school district procedure
39 or practice violates certain provisions of law;
40 providing for the additional award of injunctive
41 relief, damages, and reasonable attorney fees and
42 court costs to certain parents; providing an

634251

Approved For Filing: 2/18/2022 3:26:17 PM

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Smith, C. offered the following:

Amendment (with title amendment)

Remove line 84 and insert:
parties on sexual activity may not occur

T I T L E A M E N D M E N T

Remove line 22 and insert:
discussion about sexual activity

703365

Approved For Filing: 2/18/2022 2:54:28 PM

Amendment No.

CHAMBER ACTION

SenateHouse

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Representative Rayner offered the following:

Amendment (with title amendment)

Remove lines 83-105 and insert:

3. Student support services training developed or provided by a school district to school district personnel must adhere to student services guidelines, standards, and frameworks established by the Department of Education.

4. At the beginning of the school year, each school district shall notify parents of each healthcare service offered at their student's school and the option to withhold consent or decline any specific service. Parental consent to a health care service does not waive the parent's right to access his or her

705429

Approved For Filing: 2/18/2022 3:26:06 PM

Amendment No.

14 student's educational or health records or to be notified about
15 a change in his or her student's services or monitoring as
16 provided by this paragraph.

17 5. Before administering a student well-being questionnaire
18 or health screening form to a student in kindergarten through
19 grade 3, the school district must provide the questionnaire or
20 health screening form to the parent and obtain the permission of
21 the parent.

22 6. A parent of a student may bring an action against a
23

24 -----

25 **T I T L E A M E N D M E N T**

26 Remove lines 21-23 and insert:
27 providing construction;

705429

Approved For Filing: 2/18/2022 3:26:06 PM

Amendment No.

CHAMBER ACTION

SenateHouse

.

Representative Harding offered the following:

Amendment (with title amendment)

Remove lines 105-110 and insert:

7. Each school district shall adopt procedures for a parent to notify the principal, or his or her designee, regarding concerns under this paragraph at his or her student's school and the process for resolving those concerns within 7 calendar days after notification by the parent.

a. At a minimum, the procedures must require that within 30 days after notification by the parent that the concern remains unresolved, the school district must either resolve the

722367

Approved For Filing: 2/18/2022 3:57:33 PM

Amendment No.

13 concern or provide a statement of the reasons for not resolving
14 the concern.

15 b. If a concern is not resolved by the school district, a
16 parent may:

17 (I) Request the Commissioner of Education to appoint a
18 special magistrate who is a member of The Florida Bar in good
19 standing and who has at least 5 years' experience in
20 administrative law. The special magistrate shall determine facts
21 relating to the dispute over the school district procedure or
22 practice, consider information provided by the school district,
23 and render a recommended decision for resolution to the State
24 Board of Education within 30 days after receipt of the request
25 by the parent. The State Board of Education must approve or
26 reject the recommended decision at its next regularly scheduled
27 meeting that is more than 7 calendar days and no more than 30
28 days after the date the recommended decision is transmitted. The
29 costs of the special magistrate shall be borne by the school
30 district. The State Board of Education shall adopt rules,
31 including forms, necessary to implement this subparagraph.

32 (II) Bring an action against the school district to obtain
33 a declaratory judgment that the school district procedure or
34 practice violates this paragraph and seek injunctive relief. A
35 court may award damages and shall award reasonable attorney fees
36 and court costs to a parent who receives declaratory or
37 injunctive relief.

722367

Approved For Filing: 2/18/2022 3:57:33 PM

Amendment No.

38 c. Each school district shall adopt policies to notify
39 parents of the procedures required under this subparagraph.

40 d. Nothing contained in this subparagraph shall be
41 construed to abridge or alter rights of action or remedies in
42 equity already existing under the common law or general law.

43 -----
44
45 **T I T L E A M E N D M E N T**

46 Remove lines 34-40 and insert:

47 questionnaires and forms; requiring school districts
48 to adopt certain procedures for resolving specified
49 parental concerns; requiring resolution within a
50 specified timeframe; requiring the Commissioner of
51 Education to appoint a special magistrate for
52 unresolved concerns; providing requirements for the
53 special magistrate; requiring the State Board of
54 Education to approve or reject the special
55 magistrate's recommendation within specified
56 timeframe; requiring school districts to bear the
57 costs of the special magistrate; requiring the State
58 Board of Education to adopt rules; providing
59 requirements for such rules; authorizing a parent to
60 bring an action against a school district to obtain a
61 declaratory judgment that a school district procedure
62 or practice violates certain provisions of law;

722367

Approved For Filing: 2/18/2022 3:57:33 PM

Amendment No.

63 providing for the additional award of injunctive
64 relief, damages, and reasonable attorney fees and
65 court costs to certain parents; requiring school
66 district to adopt policies to notify parents of
67 certain rights; providing construction; requiring the

722367

Approved For Filing: 2/18/2022 3:57:33 PM

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Davis offered the following:

Amendment

Remove line 67 and insert:

district, as required by s. 1002.22(2). This paragraph does not
limit or alter any obligation of school district personnel to
report suspected abuse, abandonment, or neglect, as those terms
are defined in s. 39.01.

784679

Approved For Filing: 2/18/2022 3:33:30 PM

Amendment No.

CHAMBER ACTION

SenateHouse

.

Representative Harding offered the following:

Amendment (with title amendment)

Remove line 82 and insert:

defined in s. 39.01, based solely on child-specific information
personally known to the school personnel and as documented and
approved by the school principal or his or her designee. The
school principal or his or her designee shall develop a plan,
using all available governmental resources, to disclose such
information within 6 weeks after the decision to withhold such
information from the parent. The plan must facilitate disclosure
between the student and parent through an open dialogue in a
safe, supportive, and judgment-free environment that respects

853565

Approved For Filing: 2/18/2022 3:33:18 PM

Amendment No.

14 the parent-child relationship and protects the mental,
15 emotional, and physical well-being of the student.
16

17 -----

18 **T I T L E A M E N D M E N T**

19 Remove line 21 and insert:

20 providing construction; requiring school principals or
21 designees to develop a specified plan to disclose
22 certain information to parents within a specified time
23 period; providing requirements for such plans;
24 prohibiting classroom

853565

Approved For Filing: 2/18/2022 3:33:18 PM

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Diamond offered the following:

Amendment (with title amendment)

Remove lines 105-110

T I T L E A M E N D M E N T

Remove lines 34-40 and insert:

questionnaires and forms; requiring the

870647

Approved For Filing: 2/18/2022 3:38:45 PM

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Arrington offered the following:

Amendment

Remove lines 58-59 and insert:

provide a safe and supportive learning environment for the
student, regardless of their race, color, ethnicity, national
origin, sex, gender, gender identity, sexual identity, or
disability. The procedures must reinforce the fundamental right
of

884605

Approved For Filing: 2/18/2022 2:45:51 PM

Lobbyist Disclosure & Information

Lobbyist House Appearances Search

Year:

2022

Last Name: ?

Last Name

First Name: ?

First Name

Principal: ?

Principal

Issue Category:

--All--

Issue: ?

Issue

Firm: ?

Firm

Bill: ?

1557

Amendment:

Amendment

Search

Reset

Export To Excel

Export To CSV

Lobbyist: Alexander, Keaton	Principal: Propel Florida, LLC	Firm: Silver Palm Consulting, LLC	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Bell, Douglas S.	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Bunkley, William H.	Principal: Florida Ethics and Religion Liberty Commission, Inc	Firm:	Issues:	
Bills: CS/CS/HB 1557 : [SB 1834]	Amendments:			
Lobbyist: Cabrera, Kevin Marino	Principal: America First Works, Inc.	Firm: Mercury Public Affiars	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Calatayud, Alexis Maria	Principal: Department of Education (Withdrawn Representation)	Firm:	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Corcoran, Richard Mr.	Principal: Department of Education	Firm:	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Daughton, James R.Jr.	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:	
Bills: CS/CS/HB 1557	Amendments:			
Lobbyist: DiPietro, Aaron Godkin	Principal: Florida Family Action	Firm:	Issues:	Bills: CS/CS/HB 1557 : [SB 1834]
Amendments:				

Lobbyist: DiPietro, Aaron Godkin	Principal: Florida Family Policy Council, Inc.	Firm:	Issues:	Bills: CS/CS/HB 1557 : [SB 1834]	
Amendments:					
Lobbyist: Dodge, Wendy M.	Principal: Polk County Public Schools	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:

Use the criteria above to find Lobbyist House Appearances Records.

The **Lobbyist First and Last Name** will only bring back records that have values that start with the value in those fields.

Bill Number will take a number and return any records for that bill number for any session in the given year.

The fields **Firm** and **Principal** will only bring back records that match their text exactly. To assist you the field will start to offer autocomplete suggestions after 3 characters have been entered in the field.

The **Issue** field will bring back records where the issue contains the phrase in the text field.

Lobbyist Disclosure & Information

Lobbyist House Appearances Search

Year:

2022

Last Name: ?

Last Name

First Name: ?

First Name

Principal: ?

Principal

Issue Category:

--All--

Issue: ?

Issue

Firm: ?

Firm

Bill: ?

1557

Amendment:

Amendment

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Lobbyist: Dughi, Leslie Y.	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Fay, Megan	Principal: Collier County Public Schools	Firm: Capital City Consulting LLC	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Fay, Megan	Principal: Florida Association of District School Superintendents	Firm: Capital City Consulting LLC	Issues:	
Bills: CS/CS/HB 1557	Amendments:			
Lobbyist: Fay, Megan	Principal: The School Board of Palm Beach County, Florida	Firm: Capital City Consulting LLC	Issues:	
Bills: CS/CS/HB 1557	Amendments:			
Lobbyist: Fay, Megan	Principal: The School Board of Pinellas County	Firm: Capital City Consulting LLC	Issues:	
Bills: CS/CS/HB 1557	Amendments:			
Lobbyist: Fay, Megan	Principal: The School Board of Sarasota County	Firm: Capital City Consulting LLC	Issues:	
Bills: CS/CS/HB 1557	Amendments:			
Lobbyist: Fazzino, Tabitha Gale	Principal: Miami-Dade County Public Schools	Firm:	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Fowler, Jessica A.	Principal: Department of Education	Firm:	Issues:	Bills: CS/CS/HB 1557
Amendments:				

Lobbyist: Gross, Kara	Principal: American Civil Liberties Union of Florida	Firm:	Issues:	Bills: CS/CS/HB 1557	
Amendments:					
Lobbyist: Horner, Jacob	Principal: The Nemours Foundation	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:

Use the criteria above to find Lobbyist House Appearances Records.

The **Lobbyist First and Last Name** will only bring back records that have values that start with the value in those fields.

Bill Number will take a number and return any records for that bill number for any session in the given year.

The fields **Firm** and **Principal** will only bring back records that match their text exactly. To assist you the field will start to offer autocomplete suggestions after 3 characters have been entered in the field.

The **Issue** field will bring back records where the issue contains the phrase in the text field.

Lobbyist Disclosure & Information

Lobbyist House Appearances Search

Year:

2022

Last Name: ?

Last Name

First Name: ?

First Name

Principal: ?

Principal

Issue Category:

--All--

Issue: ?

Issue

Firm: ?

Firm

Bill: ?

1557

Amendment:

Amendment

Search

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Export To Excel

Export To CSV

Lobbyist: Husband, Warren H.		Principal: AIDS Institute, Inc, The		Firm: Metz Husband & Daughton PA		Issues:	
Bills: CS/CS/HB 1557		Amendments:					
Lobbyist: Jane, Damian		Principal: Miami-Dade County Public Schools		Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:
Lobbyist: Jaroch, Karen		Principal: Heritage Action for America		Firm:	Issues:	Bills: CS/CS/HB 1557 : [SB 1834]	
Amendments:							
Lobbyist: LaFace, Ronald C.Jr.		Principal: Collier County Public Schools		Firm: Capital City Consulting LLC		Issues:	
Bills: CS/CS/HB 1557		Amendments:					
Lobbyist: LaFace, Ronald C.Jr.		Principal: Florida Association of District School Superintendents			Firm: Capital City Consulting LLC		
Issues:	Bills: CS/CS/HB 1557	Amendments:					
Lobbyist: LaFace, Ronald C.Jr.		Principal: The School Board of Palm Beach County, Florida			Firm: Capital City Consulting LLC		Issues:
Bills: CS/CS/HB 1557		Amendments:					
Lobbyist: LaFace, Ronald C.Jr.		Principal: The School Board of Pinellas County			Firm: Capital City Consulting LLC		Issues:
Bills: CS/CS/HB 1557		Amendments:					
Lobbyist: LaFace, Ronald C.Jr.		Principal: The School Board of Sarasota County			Firm: Capital City Consulting LLC		Issues:
Bills: CS/CS/HB 1557		Amendments:					
Lobbyist: LaGosh, Jason		Principal: Orange County Public Schools (Orlando, FL)			Firm:	Issues:	Bills: CS/CS/HB 1557 : [SB 1834]
Amendments:							

Lobbyist: Liby-Schoonover, Allison	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:
Bills: CS/CS/HB 1557	Amendments:		

Use the criteria above to find Lobbyist House Appearances Records.

The **Lobbyist First and Last Name** will only bring back records that have values that start with the value in those fields.

Bill Number will take a number and return any records for that bill number for any session in the given year.

The fields **Firm** and **Principal** will only bring back records that match their text exactly. To assist you the field will start to offer autocomplete suggestions after 3 characters have been entered in the field.

The **Issue** field will bring back records where the issue contains the phrase in the text field.

Lobbyist Disclosure & Information

Lobbyist House Appearances Search

Year:

2022

Last Name: ?

Last Name

First Name: ?

First Name

Principal: ?

Principal

Issue Category:

--All--

Issue: ?

Issue

Firm: ?

Firm

Bill: ?

1557

Amendment:

Amendment

Search

Reset

Export To Excel

Export To CSV

Lobbyist: Lyon, Aimee Diaz	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:	Bills: CS/CS/HB 1557	
Amendments:					
Lobbyist: McCarty, Jess M.	Principal: Miami-Dade County	Firm:	Issues:	Bills: CS/CS/HB 1557 : [SB 1834]	Amendments:
Lobbyist: Oliva, Jacob	Principal: Department of Education	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:
Lobbyist: Palmer, Andrew T.	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:		
Bills: CS/CS/HB 1557	Amendments:				
Lobbyist: Pridgeon, Suzanne	Principal: Department of Education	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:
Lobbyist: Rasmussen, Karl Nels	Principal: AIDS Institute, Inc, The	Firm: Metz Husband & Daughton PA	Issues:		
Bills: CS/CS/HB 1557	Amendments:				
Lobbyist: Sitte, Allison	Principal: Department of Education	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:
Lobbyist: Sullivan, John J.	Principal: Broward County Public Schools	Firm:	Issues:	Bills: CS/CS/HB 1557 : [SB 1834]	
Amendments:					
Lobbyist: Swonson, Bethany	Principal: Department of Education	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:
Lobbyist: Templin, Richard E.III	Principal: Florida AFL-CIO	Firm:	Issues:	Bills: CS/CS/HB 1557	Amendments:

Use the criteria above to find Lobbyist House Appearances Records.

The **Lobbyist First and Last Name** will only bring back records that have values that start with the value in those fields.

Bill Number will take a number and return any records for that bill number for any session in the given year.

The fields **Firm** and **Principal** will only bring back records that match their text exactly. To assist you the field will start to offer autocomplete suggestions after 3 characters have been entered in the field.

The **Issue** field will bring back records where the issue contains the phrase in the text field.

Lobbyist Disclosure & Information

Lobbyist House Appearances Search

Year:

2022

Last Name: ?

Last Name

First Name: ?

First Name

Principal: ?

Principal

Issue Category:

--All--

Issue: ?

Issue

Firm: ?

Firm

Bill: ?

1557

Amendment:

Amendment

Search

Reset

Export To Excel

Export To CSV

Lobbyist: Whitis, Derek A.	Principal: Propel Florida, LLC	Firm: Whitis Consulting LLC	Issues:	Bills: CS/CS/HB 1557
Amendments:				
Lobbyist: Yarbrough, Cameron	Principal: Propel Florida, LLC	Firm: Ramba Consulting Group LLC	Issues:	Bills: CS/CS/HB 1557
Amendments:				

Use the criteria above to find Lobbyist House Appearances Records.

The **Lobbyist First and Last Name** will only bring back records that have values that start with the value in those fields.

Bill Number will take a number and return any records for that bill number for any session in the given year.

The fields **Firm** and **Principal** will only bring back records that match their text exactly. To assist you the field will start to offer autocomplete suggestions after 3 characters have been entered in the field.

The **Issue** field will bring back records where the issue contains the phrase in the text field.





175814

LEGISLATIVE ACTION

Senate

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House

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Floor: 1/F/2R

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03/07/2022 04:07 PM

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Senator Farmer moved the following:

Senate Amendment (with title amendment)

Before line 61

insert:

Section 1. Paragraph (a) of subsection (2) of section
1003.46, Florida Statutes, is amended to read:

1003.46 Health education; instruction in acquired immune
deficiency syndrome.—

(2) Throughout instruction in acquired immune deficiency
syndrome, sexually transmitted diseases, or health education,
when such instruction and course material contains instruction



175814

in human sexuality, a school shall:

(a) Teach abstinence from sexual activity outside of marriage as the expected standard for all school-age students while teaching the benefits of monogamous ~~heterosexual~~ marriage.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 2

and insert:

An act relating to education; amending s. 1003.46, F.S.; revising the requirements for certain health education instruction;



201756

LEGISLATIVE ACTION

Senate

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House

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Floor: 6/F/2R

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03/07/2022 04:45 PM

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Senator Jones moved the following:

Senate Amendment (with title amendment)

Delete lines 98 - 101

and insert:

parties intended to change a student's sexual orientation or
gender identity may not occur.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 22 - 23

and insert:



201756

12 instruction intended to change a student's sexual
13 orientation or gender identity;



290096

LEGISLATIVE ACTION

Senate

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House

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Floor: 5/F/2R

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03/07/2022 04:29 PM

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Senator Polsky moved the following:

Senate Amendment (with title amendment)

Delete line 97

and insert:

3.a. For purposes of this subparagraph, the term:

(I) "Gender identity" means gender-related identity,
appearance, or behavior, regardless of whether such gender-
related identity, appearance, or behavior is different from that
traditionally associated with an individual's physiology or
assigned sex at birth.

(II) "Sexual orientation" means an individual's



290096

heterosexuality, homosexuality, or bisexuality.

b. Classroom instruction by school personnel or third

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 21

and insert:

providing construction; defining terms; prohibiting
classroom



374376

LEGISLATIVE ACTION

Senate

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House

Floor: 14/F/2R

03/07/2022 05:48 PM

Senator Berman moved the following:

Senate Amendment (with title amendment)

Between lines 156 and 157
insert:

8. To ensure that parents and legal guardians know how to discuss sexual orientation and gender identity with their children, the Department of Education, in consultation with Parents, Families, and Friends of Lesbians and Gays (PFLAG) and the Gay, Lesbian, and Straight Education Network (GLSEN), shall create a pamphlet focused on providing parents and legal guardians with information on how to talk to their children



374376

about sexual orientation and gender identity. The pamphlet must
contain contact information for local LGBTQ+ focused
organizations that can assist parents in preparing for such
conversations. Each school district shall annually provide the
pamphlet to parents and legal guardians and prominently display
such pamphlets in the front office of schools within the
district.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Between lines 54 and 55

insert:

department, in consultation with specified
organizations, to create a pamphlet; providing
requirements for such pamphlet; requiring school
districts to annually distribute such pamphlet to
parents and legal guardians and to prominently display
such pamphlets in a specified location in district
schools; requiring the



421704

LEGISLATIVE ACTION

Senate

House

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Floor: 4/F/2R

03/07/2022 04:24 PM

Senator Farmer moved the following:

Senate Amendment (with title amendment)

Delete lines 97 - 101.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 21 - 23

and insert:

providing construction;



427586

LEGISLATIVE ACTION

Senate

House

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Floor: 8/F/2R

03/07/2022 04:58 PM

Senator Brandes moved the following:

Senate Substitute for Amendment (973790) (with title amendment)

Delete line 98
and insert:
parties on human sexuality, including, but not limited to,
curricula addressing sexual activity, sexual orientation, or
gender identity, may not occur

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



427586

12 Delete line 22
13 and insert:
14 instruction on human sexuality



486826

LEGISLATIVE ACTION

Senate

House

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Floor: 13/F/2R

03/07/2022 05:40 PM

Senator Stewart moved the following:

Senate Amendment (with title amendment)

Delete line 151
and insert:
injunctive relief. A court shall award reasonable attorney fees
and court costs to a school district that is found to have not
violated this paragraph.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 52



486826

12 and insert:
13 court costs to certain parents; providing for the
14 award of reasonable attorney fees and court costs to
15 certain school districts; requiring school



538822

LEGISLATIVE ACTION

Senate

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House

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Floor: 11/F/2R

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03/07/2022 05:15 PM

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Senator Gibson moved the following:

Senate Amendment (with title amendment)

Delete lines 102 - 162

and insert:

4. At the beginning of the school year, each school district shall notify parents of each health care service offered at their student's school and the option to withhold consent or decline any specific service. Parental consent to a health care service does not waive the parent's right to access his or her student's educational or health records or to be notified about a change in his or her student's services or



538822

monitoring as provided by this paragraph.

5. Before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3, the school district must provide the questionnaire or health screening form to the parent and obtain the permission of the parent.

6. Each school district shall adopt procedures for a parent to notify the principal, or his or her designee, regarding concerns under this paragraph at his or her student's school and the process for resolving those concerns within 7 calendar days after notification by the parent.

a. At a minimum, the procedures must require that within 30 days after notification by the parent that the concern remains unresolved, the school district must either resolve the concern or provide a statement of the reasons for not resolving the concern.

b. If a concern is not resolved by the school district, a parent may:

(I) Request the Commissioner of Education to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least 5 years' experience in administrative law. The special magistrate shall determine facts relating to the dispute over the school district procedure or practice, consider information provided by the school district, and render a recommended decision for resolution to the State Board of Education within 30 days after receipt of the request by the parent. The State Board of Education must approve or reject the recommended decision at its next regularly scheduled meeting that is more than 7 calendar days and no more than 30



538822

days after the date the recommended decision is transmitted. The costs of the special magistrate shall be borne by the school district. The State Board of Education shall adopt rules, including forms, necessary to implement this sub-sub-paragraph.

(II) Bring an action against the school district to obtain a declaratory judgment that the school district procedure or practice violates this paragraph and seek injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

c. Each school district shall adopt policies to notify parents of the procedures required under this subparagraph.

d. Nothing contained in this subparagraph shall be construed to abridge or alter rights of action or remedies in equity already existing under the common law or general law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 24 - 56

and insert:

requiring school districts to notify parents of health care services and provide parents the opportunity to consent or decline such services; providing that a specified parental consent does not wave certain parental rights; requiring school districts to provide parents with certain questionnaires or health screening forms and obtain parental permission before administering such questionnaires and forms; requiring



538822

70 school districts to adopt certain procedures for
71 resolving specified parental concerns; requiring
72 resolution within a specified timeframe; requiring the
73 Commissioner of Education to appoint a special
74 magistrate for unresolved concerns; providing
75 requirements for the special magistrate; requiring the
76 State Board of Education to approve or reject the
77 special magistrate's recommendation within specified
78 timeframe; requiring school districts to bear the
79 costs of the special magistrate; requiring the State
80 Board of Education to adopt rules; providing
81 requirements for such rules; authorizing a parent to
82 bring an action against a school district to obtain a
83 declaratory judgment that a school district procedure
84 or practice violates certain provisions of law;
85 providing for the additional award of injunctive
86 relief, damages, and reasonable attorney fees and
87 court costs to certain parents; requiring school
88 districts to adopt policies to notify parents of
89 certain rights; providing construction; providing an



546314

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/01/2022	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Substitute for Amendment (760288) (with title amendment)

Delete line 98
and insert:
parties on human sexuality or sexual activity may not occur

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 22



546314

11 and insert:
12 discussion about human sexuality or sexual activity



600584

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/04/2022 08:35 PM

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Senator Jones moved the following:

Senate Amendment (with title amendment)

Delete lines 130 - 151

and insert:

parent may request the Commissioner of Education to appoint a
special magistrate who is a member of The Florida Bar in good
standing and who has at least 5 years' experience in
administrative law. The special magistrate shall determine facts
relating to the dispute over the school district procedure or
practice, consider information provided by the school district,
and render a recommended decision for resolution to the State



600584

Board of Education within 30 days after receipt of the request
by the parent. The State Board of Education must approve or
reject the recommended decision at its next regularly scheduled
meeting that is more than 7 calendar days and no more than 30
days after the date the recommended decision is transmitted. The
costs of the special magistrate shall be borne by the school
district. The State Board of Education shall adopt rules,
including forms, necessary to implement this sub-subparagraph.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 46 - 52

and insert:

requirements for such rules; requiring a school



629944

LEGISLATIVE ACTION

Senate

House

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Floor: WD

03/05/2022 02:16 PM

Senator Farmer moved the following:

Senate Amendment

Delete line 73
and insert:
student, regardless of their race, color, ethnicity, national
origin, sex, gender, gender identity, sexual identity, or
disability. The procedures must reinforce the fundamental right
of



734244

LEGISLATIVE ACTION

Senate

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House

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Floor: 10/F/2R

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03/07/2022 05:11 PM

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Senator Bracy moved the following:

Senate Amendment (with title amendment)

Delete line 101

and insert:

accordance with state standards. This subparagraph does not
apply to any discussion between a student who identifies as
transgender, gender nonconforming, non-binary, or otherwise
LGBTQ+ and their peers.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



734244

12 Between lines 23 and 24
13 insert:
14 providing an exemption from such prohibition;



745072

LEGISLATIVE ACTION

Senate

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House

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Floor: 12/F/2R

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03/07/2022 05:31 PM

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Senator Pizzo moved the following:

Senate Amendment (with title amendment)

Delete lines 130 - 151

and insert:

parent may request the Commissioner of Education to appoint a
special magistrate who is a member of The Florida Bar in good
standing and who has at least 5 years' experience in
administrative law. The special magistrate shall determine facts
relating to the dispute over the school district procedure or
practice, consider information provided by the school district,
and render a recommended decision for resolution to the State



745072

Board of Education within 30 days after receipt of the request
by the parent. The State Board of Education must approve or
reject the recommended decision at its next regularly scheduled
meeting that is more than 7 calendar days and no more than 30
days after the date the recommended decision is transmitted. The
State Board of Education shall adopt rules, including forms,
necessary to implement this sub-subparagraph.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 43 - 52

and insert:

timeframe; requiring the State Board of Education to
adopt rules; providing requirements for such rules;
requiring school



755282

LEGISLATIVE ACTION

Senate

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House

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Floor: 9/F/2R

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03/07/2022 05:07 PM

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Senator Book moved the following:

Senate Amendment (with title amendment)

Delete line 101

and insert:

accordance with state standards. For purposes of this
subparagraph, the term "classroom instruction" does not include
instruction or discussion relating to any of the following:

a. Family structures.

b. Objective historical events.

c. Bullying prevention.

d. A student's individual education plan (IEP) or 504 plan.



755282

e. Discussions between students.

f. Questions asked by students and any answer.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Between lines 23 and 24

insert:

providing construction;



756788

LEGISLATIVE ACTION

Senate

House

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Floor: 3/F/2R

03/07/2022 04:19 PM

Senator Taddeo moved the following:

Senate Amendment

Delete line 81
and insert:
district, as required by s. 1002.22(2). This subparagraph does
not limit or alter any obligation of school district personnel
to report suspected abuse, abandonment, or neglect, as those
terms are defined in s. 39.01.



760288

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2022	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete line 98
and insert:
parties on human sexuality may not occur

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 22
and insert:



760288

11 discussion about human sexuality



782202

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/04/2022 08:36 PM

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Senator Jones moved the following:

Senate Amendment (with title amendment)

Before line 61

insert:

Section 1. Paragraph (a) of subsection (2) of section
1003.46, Florida Statutes, is amended to read:

1003.46 Health education; instruction in acquired immune
deficiency syndrome.—

(2) Throughout instruction in acquired immune deficiency
syndrome, sexually transmitted diseases, or health education,
when such instruction and course material contains instruction



782202

in human sexuality, a school shall:

(a) Teach abstinence from sexual activity outside of marriage as the expected standard for all school-age students while teaching the benefits of monogamous ~~heterosexual~~ marriage.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 2

and insert:

An act relating to education; amending s. 1003.46, F.S.; revising the requirements for certain health education instruction;



806774

LEGISLATIVE ACTION

Senate

House

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Floor: WD

03/07/2022 09:21 AM

Senator Brandes moved the following:

Senate Amendment (with title amendment)

Delete line 98
and insert:
parties on human sexuality, including, but not limited to,
curricula addressing sexual activity, sexual orientation, or
gender identity, may not occur

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 22



806774

12 and insert:
13 instruction on human sexuality



907198

LEGISLATIVE ACTION

Senate

House

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Floor: 2/F/2R

03/07/2022 04:15 PM

Senator Cruz moved the following:

Senate Amendment

Delete line 73
and insert:
student, regardless of their race, color, ethnicity, national
origin, sex, gender, gender identity, sexual orientation, or
disability. The procedures must reinforce the fundamental right
of



967070

LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

03/04/2022 08:36 PM

Senator Jones moved the following:

Senate Amendment (with title amendment)

Delete lines 97 - 101.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 21 - 23

and insert:

providing construction;



973790

LEGISLATIVE ACTION

Senate

House

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Floor: 7/WD/2R

03/07/2022 04:58 PM

Senator Brandes moved the following:

Senate Amendment (with title amendment)

Delete line 98
and insert:
parties on human sexuality or sexual activity may not occur

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 22
and insert:
discussion about human sexuality or sexual activity

From: briansmithdc@aol.com,
To: Teresa.Jacobs@ocps.net,
Subject: SB1834
Date: Fri, Feb 11, 2022 9:58 pm

Ms. Theresa Jacobs,

You are undoubtedly aware the legislature is considering SB1834, a piece of hate legislation that enables 1 person to dictate school policy for an entire district. Not only is this unconstitutional, but it is also un-American and undemocratic. The system of education utilized to instruct the leaders of tomorrow should in no way be subject to an unAmerican process as will become law if this is passed.

I would like to see the school board publicly avow their dedication to the democratic process by formally adopting a procedure to require any parent-led restriction upon the curriculum taught in public schools such as is contained in SB1834 to only be adopted after it is put to a referendum placed before the registered voters within the school district.

As you are probably aware, the passage of this law will jeopardize Federal funding for all levels of Florida's education system, and Florida's reputation as having severe deficiencies within the education system still has not recovered from similarly misguided, hate-inspired policies adopted in the late 1950s and early 1960s. If this becomes law it will have severe negative implications on the state's education as a whole when compared to the other states, an impact it will suffer for decades to come.

It will also embroil the State in federal legal actions that will waste taxpayer dollars at both the State and federal levels. Not to mention the withholding of federal funds until the state complies with federal laws; it is foreseeable that the immediate future for OCSD does not bode well if steps are not taken now to (1) prevent the implementation of an undemocratic law; (2) make plans for the loss of federal dollars; and (3) as an action taken under this law by OCSD will be answered with a lawsuit, you should take measures to insulate the Board from such lawsuits as much as possible before it becomes an issue.

Sincerely,

Dr. Brian A. Smith
12746 Parkbury Drive
Orlando, FL 32828

407.457.2800

From: Teresa.Jacobs@ocps.net,
To: briansmithdc@aol.com,
Subject: Re: SB1834
Date: Sun, Feb 13, 2022 12:33 pm

Mr. Smith,

Thank you for writing to me about this legislation. Our board is equally concerned and several of us were in Tallahassee last week advocating for additional funding to provide competitive salaries for our support personnel, such as bus drivers, and higher pay for our experienced teachers.

We also advocated against SB 1834 and in favor of our continued ability to make decisions at a local level. However, if this bill passes and is signed into law by the governor, we will have no choice but to abide by it. Any challenges to our procedures referenced in this bill would then be decided by the courts, not by a democratic process.

Our Central Florida delegation was very supportive of our positions. Unfortunately, the leadership in the House and Senate and the majority of the legislature have not been supportive of adequately funding public education or protecting local or democratic decision-making authority.

Teresa Jacobs
School Board Chair
Orange County Public Schools
45 W. Amelia St., Orlando, Florida 32801
407-317-3236
www.ocps.net

From: Brian Smith, DC <briansmithdc@aol.com>
Sent: Friday, February 11, 2022 09:58 PM
To: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>
Subject: SB1834

 **CAUTION:** This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

Ms. Theresa Jacobs,

You are undoubtedly aware the legislature is considering SB1834, a piece of hate legislation that enables 1 person to dictate school policy for an entire district. Not only is this unconstitutional, but it is also un-American and undemocratic. The system of education utilized to instruct the leaders of tomorrow should in no way be subject to an unAmerican process as will become law if this is passed.

I would like to see the school board publicly avow their dedication to the democratic process by formally adopting a procedure to require any parent-led restriction upon the curriculum taught in public schools such as is contained in SB1834 to only be adopted after it is put to a referendum placed before the registered voters within the school district.

As you are probably aware, the passage of this law will jeopardize Federal funding for all levels of Florida's education system, and Florida's reputation as having severe deficiencies within the education system still has not recovered from similarly misguided, hate-inspired policies adopted in the late

1950s and early 1960s. If this becomes law it will have severe negative implications on the state's education as a whole when compared to the other states, an impact it will suffer for decades to come.

It will also embroil the State in federal legal actions that will waste taxpayer dollars at both the State and federal levels. Not to mention the withholding of federal funds until the state complies with federal laws; it is foreseeable that the immediate future for OCSD does not bode well if steps are not taken now to (1) prevent the implementation of an undemocratic law; (2) make plans for the loss of federal dollars; and (3) as an action taken under this law by OCSD will be answered with a lawsuit, you should take measures to insulate the Board from such lawsuits as much as possible before it becomes an issue.

Sincerely,

Dr. Brian A. Smith
12746 Parkbury Drive
Orlando, FL 32828

407.457.2800

The information contained in this e-mail message is intended solely for the recipient(s) and may contain privileged information. Tampering with or altering the contents of this message is prohibited. This information is the same as any written document and may be subject to all rules governing public information according to Florida Statutes. Any message that falls under Chapter 119 shall not be altered in a manner that misrepresents the activities of Orange County Public Schools.
[References: Florida State Constitution I.24, Florida State Statutes Chapter 119, and OCPS Management Directive A-9.] If you have received this message in error, or are not the named recipient notify the sender and delete this message from your computer.

28 June 2022

Orange County Public School Board
45 West Amelia Street
Orlando, Florida 32801

Greetings to All Members of the Board:

The attached Notification fulfills the legal requirements as specified in Florida State law for such notifications. The Orange County Public School Board is deemed to be in receipt of this Notification as of the date of this letter or the date of the postmark of this letter.

This Notification was served on Richard Corcoran, Education Commissioner of Florida, on 22 March 2022 and served on Tom Grady, Chair of the Florida State Board of Education on 19 April 2022.

Did either department contact the Orange County Public School Board to relay this information, and what date was that done?

This also serves as legal Notification to your Board which requires you to proceed as stated in law. Recent decisions by the Board such as requiring the removal of designated “safe spaces” for K-3 students places certain student populations at higher risk of abuse and makes such a decision contrary to the law. The fact of the notification of the Board on the date as stipulated above has been recorded and disseminated to interested parties.

Enforcement of this ruling places the Board in legal jeopardy if any student who suffers abuse at school, at home, or anywhere on or after 1 July 2022 in any legal action brought against the Board.

The Board has been served the attached Notification by depositing same in the receptacle for United States Postal Service pick-up on 28 June 2022.

A handwritten signature in black ink, appearing to read "Brian A. Smith", is written over a light blue rectangular background.

Dr. Brian A. Smith (ret)
12746 Parkbury Drive
Orlando, Florida 32828
407.457.2800

Notification



RESULTS THIS CONGRESS

 **\$6,347,457.40** Dollars Returned to Constituents

 **200,672** Responses to Letters, Emails, and Calls

WRITE YOUR REP

Write Your Representative

Required fields are followed by *.

Your Information

Prefix *

Dr. ▼

First Name *

BRIAN

Last Name *

SMITH

Street Address *

12746 PARKBURY DRIVE,

City *



Zip *

32828

Phone *

4074572800

Email Information

Email *

BRIANSMITHDC@AOL.CC

☐ Yes, I would like to subscribe to your email newsletter.**Your Message**

- ☒ Yes, I would like a response.
☐ No, I just want you to know my thoughts.

Select the issue your email relates to:

Education ▼

Subject *

Florida SB1834

Comment *

As I am sure you are aware, the Florida legislature is about to act on several pieces of legislation that are unconstitutional such as affording a separate level of insulation from taking responsibility for the acts committed by elected representatives in the form of banning protests at their residence. If they did not want to be held responsible, they should not have entered politics. What would they rather have happen to their homes?

My concern is with SB1834 which allows a single person to dictate the subjects allowed to be taught in the public school classrooms. Not only is this anti-American and dangerous (it mimics the same restrictions enacted by the National Socialist Party in the Weimar Republic), it is in violation of Federal statutes. As such, it would be appreciated if your office takes whatever steps are required to suspend payments of ALL Federal monies earmarked or the State of Florida to begin on the day that this bill is approved in the legislature this week. At a minimum, suspending all education-related financial support for public schools, colleges, and universities should be immediately implemented. This information, of course, should be disseminated through the usual press outlets.

From: stephanie.murphy@mail.house.gov,
To: briansmithdc@aol.com,
Subject: From the Office of U.S. Congresswoman Stephanie Murphy
Date: Fri, Feb 11, 2022 4:00 pm

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
SUBCOMMITTEE ON WORKER & FAMILY SUPPORT

COMMITTEE ON ARMED SERVICES
VICE CHAIR,

SUBCOMMITTEE ON INTELLIGENCE
AND SPECIAL OPERATIONS

SUBCOMMITTEE ON TACTICAL AIR
AND LAND FORCES



CONGRESSWOMAN STEPHANIE MURPHY
U.S. HOUSE OF REPRESENTATIVES
FLORIDA, 7TH DISTRICT

WASHINGTON OFFICE:
1710 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4035

ORLANDO OFFICE:
225 E ROBINSON ST, SUITE 525
ORLANDO, FL 32801
(888) 205-5421

SANFORD OFFICE:
110 W FIRST ST, SUITE 210
SANFORD, FL 32771
(888) 205-5421

February 11, 2022

Dear Dr. SMITH:

Thank you for contacting me to express your views regarding legislation pending in the Florida Legislature. I appreciate hearing your opinion on issues affecting our community.

As you know, as a Member of the U.S. House of Representatives, I vote on federal legislation being considered in the U.S. Congress rather than on state legislation being considered in the Florida Legislature. Therefore, I am unable to vote on the bill you brought to my attention. However, if you would like to share your views with your state representatives in either the Florida House of Representatives or the Florida Senate, who may vote on this bill and on other bills pending in the Florida Legislature, please visit myfloridahouse.gov to find their contact information.

I want to thank you again for taking the time to contact me. I make every effort to incorporate my constituents' concerns and suggestions into my work, and I hope you continue to stay in touch. If my office can ever be of any assistance, please do not hesitate to contact us toll free at 1-888-205-5421.

Please also visit [my website](http://mywebsite) to sign up for periodic updates from my office about the issues that are important to you, and follow me on social media at [Facebook](https://www.facebook.com/stephanie.murphy) and [Twitter](https://twitter.com/stephanie.murphy).

It is an honor to be your voice in our nation's capital.

Sincerely,

Stephanie Murphy
Member of Congress



RESULTS THIS CONGRESS

 **\$6,347,457.40** Dollars Returned to Constituents

 **200,672** Responses to Letters, Emails, and Calls

WRITE YOUR REP

Write Your Representative

Required fields are followed by *.

Your Information

Prefix *

Dr. ▼

First Name *

BRIAN

Last Name *

SMITH

Street Address *

12746 PARKBURY DRIVE,

City *



Zip *

32828

Phone *

4074572800

Email Information

Email *

BRIANSMITHDC@AOL.CC

☐ Yes, I would like to subscribe to your email newsletter.**Your Message**

- ☒ Yes, I would like a response.
☐ No, I just want you to know my thoughts.

Select the issue your email relates to:

Education ▼

Subject *

Florida SB1834

Comment *

Thank you for your quick response however, it indicates that the request I was making was not conveyed.

I am not asking for your vote on State legislation; I am experienced in these matters having helped draft Federal legislation that became the Ryan White Act.

I am asking that you do whatever you can to stop Federal funding destined for Florida or at least inform me of the oversight agency or committee that has the Federal authority to halt all Federal monies from going to the State of Florida as long as this hate legislation has the possibility of becoming law.

Dr. Brian A Smith

From: Zoe.Prince@mail.house.gov,
To: Zoe.Prince@mail.house.gov,
Subject: Office of Congresswoman Stephanie Murphy
Date: Tue, Mar 1, 2022 2:37 pm

Hello,

Thank you for reaching out to the Office of Congresswoman Stephanie Murphy regarding the Florida Legislature's "Don't Say Gay" bill.

As you know, this bill would prohibit educators from engaging in discussions about sexual orientation or gender identity in kindergarten through third grade classrooms. This issue is deeply personal to the Congresswoman. Central Florida is home to a vibrant LGBT community that prides itself on its diversity and inclusivity. As a mother, Congresswoman Murphy believes that children should feel affirmed and accepted by their teachers and in their schools, and regards this bill as a threat to students' well-being and mental health. The American Psychological Association and the National Association of School Psychologists report that LGBT youth in a school environment that affirmed their identities—rather than erase or reject it—were 33% less likely to report attempting suicide.

In response to this harmful Florida bill, Congresswoman Murphy recently signed onto [a letter](#) from Members of Congress to Florida legislative leaders, urging them not to advance this. Of course, as a U.S. Congresswoman, Rep. Murphy will not have the opportunity to vote on this legislation. On the federal level, however, the Congresswoman cosponsored and voted in support of H.R. 5, the *Equality Act*, which outlaws discrimination against members of the LGBT community in the areas of housing, education, employment, and jury service. The U.S. House of Representatives passed H.R. 5 on February 25, 2021 and the bill is now awaiting further consideration in the U.S. Senate.

Thank you again for reaching out about this important issue. As issues pertaining to the LGBT community in Central Florida and around the country come before Congress, we will make sure to keep your thoughts in mind.

Best,

Zoë Prince (she/her)

Legislative Assistant

Office of Congresswoman Stephanie Murphy (FL-07)

[1710 Longworth House Office Building](#)

[Washington, DC 20515](#)

Office: [202-225-4035](#)

Congress of the United States
Washington, DC 20515

February 21, 2022

The Honorable Wilton Simpson
President of the Florida Senate
409, The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Chris Sprowls
Speaker of the Florida House of Representatives
420, The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear President Simpson and Speaker Sprowls:

We write today regarding two bills being considered by the Florida Legislature, misleadingly titled “Parental Rights in Education” (HB 1557 and SB 1834). Under this legislation, schools would be barred from classroom discussions about sexual orientation or gender identity in kindergarten through third grade, and more vaguely prohibit it in any “manner that is not age-appropriate or developmentally appropriate.” Furthermore, the bills open the floodgates to frivolous lawsuits by parents seeking to restrict the acknowledgement of LGBTQ+ identities in school. In the interest of academic freedom and the mental health of students, we urge you to oppose these bills and not allow them to come to the floor of the Florida House or Senate for a vote.

The ACLU is currently tracking nearly 150 active state bills that discriminate against the LGBTQ+ community, five of which are moving through the Florida Legislature.ⁱ While all of these bills threaten LGBTQ+ civil rights, HB 1557 and SB 1834 are additionally egregious due to their disastrous implications for the principles of free speech and freedom of expression and attack the very core of American constitutional democracy. Unfortunately, these bills continue to receive national attention since they have advanced in the legislative process beyond similar bills in other states seeking to restrict LGBTQ+ rights in education.

Under the guise of parents’ rights, these two bills fit into an alarming trend of rising threats to academic freedom and American children’s right to a comprehensive education. Contrary to assertions by the bills’ supporters that discussions of sexual orientation and gender identity are inappropriate for schoolchildren, **the American Psychological Association and the National Association of School Psychologists recommend that K-12 schools acknowledge sexual and**

gender diversity and “create policies that directly improve, *affirm*, and support the health and wellbeing of gender and sexual diverse children and adolescents of all ages.”ⁱⁱ

LGBTQ+ youth face a wide breadth of unique barriers to mental wellbeing as they venture to openly embrace their identities and seek acceptance from peers and adults, including their parents and teachers. According to the Trevor Project’s 2021 National Survey on LGBTQ Youth Mental Health, the overwhelming majority of LGBTQ+ youth reported symptoms of generalized anxiety and major depressive disorder.ⁱⁱⁱ The rising politicization of LGBTQ+ schoolchildren’s lives – and transgender and nonbinary youth in particular – has only worsened recently, with 94% reporting that “recent politics negatively impacted their mental health.” **Critically, LGBTQ-inclusive curricula improved mental health outcomes, and LGBTQ+ youth in a school environment that affirmed their identities – rather than erasing or rejecting it – were 33% less likely to report attempting suicide.**^{iv}

Florida schools already fail to provide a safe environment for LGBTQ+ students, with one survey of secondary students in Florida finding that 61% experienced at least one form of anti-LGBTQ discrimination.^v A new law silencing LGBTQ+ students and inciting a culture of fear around the discussion of LGBTQ+ identities will only serve to further degrade the poor state of LGBTQ+ youth mental health.

Schools must be institutions that foster learning, innovation, and growth – not secrecy and intimidation.

Whether students identify as a part of the LGBTQ+ community or not, they deserve to hear the stories of Bayard Rustin, a Black gay man who helped organize the 1963 March on Washington, and Marsha P. Johnson, a Black transgender activist who was a prominent figure in the Stonewall uprising. They should also learn about landmark Supreme Court cases like *U.S. v. Windsor* and *Obergefell v. Hodges* – and the loving same-sex couples behind these victories – which drastically advanced justice and equality for LGBTQ+ people in the United States.

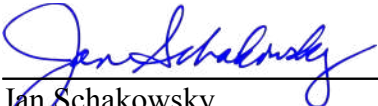
An education that lacks these fundamental details of the history of American civil rights is one that is incomplete.

LGBTQ+ kids *must not* be a pawn exploited in today’s political discourse – not in Florida, nor any other state in our nation. We ask that you consider the harmful toll this legislation would have on LGBTQ+ children’s mental health and individual liberties in education, oppose these bills, and do not bring them to a vote on the floor of the Florida House or Senate.

Sincerely,



Debbie Wasserman Schultz
Member of Congress



Jan Schakowsky
Member of Congress



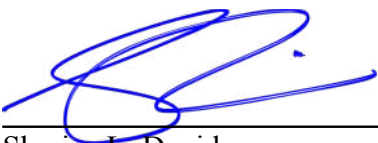
Lois Frankel
Member of Congress



Mark Takano
Member of Congress



Ritchie Torres
Member of Congress



Sharice L. Davids
Member of Congress



David N. Cicilline
Member of Congress



Nikema Williams
Member of Congress



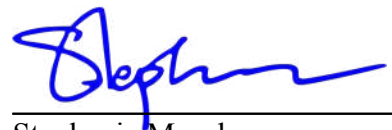
Ted Deutch
Member of Congress



Carolyn B. Maloney
Member of Congress



Sean Casten
Member of Congress



Stephanie Murphy
Member of Congress



Frederica S. Wilson
Member of Congress



Mark Pocan
Member of Congress



André Carson
Member of Congress



Brian Higgins
Member of Congress



Charlie Crist
Member of Congress



Debbie Dingell
Member of Congress



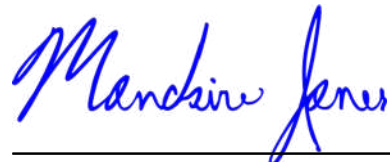
Darren Soto
Member of Congress



Katie Porter
Member of Congress



Kathy Castor
Member of Congress



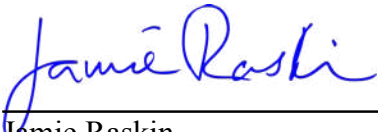
Mondaire Jones
Member of Congress



Mike Quigley
Member of Congress



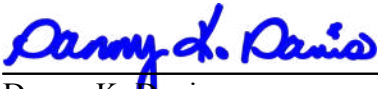
Jim Cooper
Member of Congress



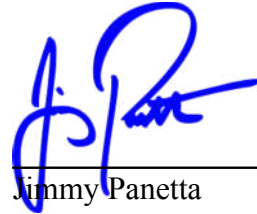
Jamie Raskin
Member of Congress



Dwight Evans
Member of Congress



Danny K. Davis
Member of Congress



Jimmy Panetta
Member of Congress



Ruben Gallego
Member of Congress

CC:

The Honorable Ron DeSantis, Governor of Florida

The Honorable Debbie Mayfield, Florida Senate Majority Leader

The Honorable Lauren Book, Florida Senate Minority Leader

The Honorable Michael Grant, Florida House Majority Leader

The Honorable Evan Jenne, Florida House Minority Leader

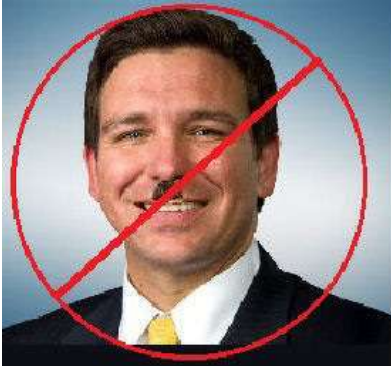
ⁱ American Civil Liberties Union. “Legislation Affecting LGBTQ Rights Across the Country.” February 11, 2022. <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>

ⁱⁱ American Psychological Association. “APA RESOLUTION on Supporting Sexual/Gender Diverse Children and Adolescents in Schools.” February 2020. <https://www.apa.org/about/policy/resolution-supporting-gender-diverse-children.pdf> *Emphasis added.*

ⁱⁱⁱ The Trevor Project. “National Survey on LGBTQ Youth Mental Health 2021.” <https://www.thetrevorproject.org/survey-2021/>

^{iv} In addition to the Trevor Project’s survey, see also research by GLSEN: “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

^v GLSEN. “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>



Neil deSantis

SB 1834

is

un-American



Baxley must GO!

NOW!

GENERAL, PRESS RELEASE

Tallahassee update as 2022 Session continues ...

POSTED ON FEBRUARY 9, 2022 BY PRESS RELEASE

By Peter Schorsch
Sixty Days Newsletter
February 9, 3033

[Highlights of the Florida Legislative Session for February 7, 2022]

A slew of teachers, parents and students descended on the Capitol to speak out against a bill (**SB 1834**) that would limit classroom discussions of LGBTQ issues. Derided by Democrats and LGBTQ rights advocates as the “don’t say gay” bill, the legislation will give parents the right to sue if they feel their child’s school crossed the line. Despite the wave of public testimony opposing the bill, the measure cleared the Senate Education Committee **with a party-line vote**. In a rare move, the Biden administration issued a statement slamming the bill and the Republican lawmakers who supported it, saying it runs counter to the “basic values” of “children’s safety, protection and freedom.” **Here’s your nightly rundown.**

March 3rd 11:20 AM Lucy



OPPOSE HB 1557/SB 1834 "Don't Say Gay"

by Rep. Harding and Sen. Baxley

The "Don't Say Gay" bill (a.k.a. "Parental Rights in Education")

DON'T SAY GAY:

- The bill would **effectively erase LGBTQ students, families, and history** by banning classroom discussion about sexual orientation and gender identity in elementary and middle schools or at any level "in a manner that is not age-appropriate." The Legislature cannot force LGBTQ people back into the closet by policing identity or stopping kids from talking about their same-sex parents.

THREATENS LGBTQ YOUTH AND POLICIES:

- The bill's **dangerously vague provisions would have a chilling effect on support for LGBTQ youth** because it creates broad and costly new liabilities for school districts. As drafted, parents unsupportive of a districts LGBTQ youth policies are given broad powers to sue, including seeking damages and injunctive relief. Far-right activists are already turning School Board meetings into political battlegrounds and shouting down LGBTQ students. We know these powers will be weaponized to challenge any progress on policies of inclusion.

FOX GUARDING THE HEN HOUSE:

- The bill **requires all "student support services trainings" in school districts to adhere to the guidelines and standards of the Florida Department of Education (DOE)**. Just weeks ago DOE withdrew its anti-bullying resources intended to help prevent LGBTQ youth suicides, raising critical questions about its ability to protect at-risk LGBTQ children.

Cassie Smith
D. Dennis states that a leg. analysis found that
the bill would not affect an student in
grade 4 or higher

Rep. HARRIS
Sen. Baxley
Bob and Debra

CAPITOL 1101 Rm
SOS 402 412

Mark
Saul NART

10:30
Am

3PM

AA

PLEASE
Aide

Legislator Name	Party	Area Represented	Meeting Date/Time/Notes	Group	Captain
Rep. Nick DiCeglie	R	Largo (Pinellas County)	Feb 15, Tues., 10:30am House Office Bldg., rm 303	Grp.. 10 - J. Lo	Latonya Thurman
Sen. Doug Broxson	R	Escambia County	Feb 15, Tues., 3pm Senate Office Bldg., rm 418	Grp.. 10 - J. Lo	Latonya Thurman
Rep. Matt Willhite	D	Wellington (Palm Beach County)	Feb 15, Tues., time TBD House Office Bldg., rm 216	Grp.. 10 - J. Lo	Latonya Thurman
Rep. Daniel Perez	R	Miami-Dade County (Miami)	Drop-By Capitol, rm 317	Grp.. 10 - J. Lo	Latonya Thurman
Rep. Mike Caruso	R	Palm Beach County (Delray Beach)	Drop-By House Office Bldg., rm 200	Grp.. 10 - J. Lo	Latonya Thurman
Rep. Kristen Arrington	D	Osecola County (Kissimmee)	Drop-By Capitol, rm 1301	Grp.. 10 - J. Lo	Latonya Thurman

Note:

You can look up information on the lawmakers you are meeting with at www.myfloridahouse.gov or www.flsenate.gov.

When you have downtime between meetings, you can debrief your meetings in the Capitol Cafeteria (Lower Level), the Capitol Café (10th floor), or quietly in the halls. Please be respectful and keep in mind that people--potentially those opposing our interest--are in those same spaces working and listening, so keep your voice down and avoid snarky comments about lawmakers or staff.

Besides the Capitol Cafeteria (the easiest option), you can go to Andrew's Grill (228 S. Adams St.) or Goodies Eatery (116 E. College Ave.) for lunch, both of which are a 1-2 block short walk from the Capitol. However, be sure to leave plenty of time before your next meeting, as you'll have to go back through security and those restaurants can get crowded.

MONDAY: To access Knott Building room 212 where we'll watch the House Professions & Public Health Subcommittee meeting beginning at 4 p.m. (if you don't have scheduled meetings), take the elevator to the Second Floor of the Capitol, then head toward the Senate Office Building. At the end of the hall, you'll make a right toward Knott Building (instead of a left toward the Senate Office Building). Once you cross over the sky walkway, you'll be on the 4th Floor of the Knott Building, so go down two floors to find room 212.

TUESDAY: To enter the Gallery where we'll watch debate on the House Floor (if you don't have scheduled meetings), take the elevator to the Fifth Floor of the Capitol, and you'll see the entrance to the left of the rotunda. Please find a seat on the west side (left after passing through security), if available. No food or drinks are permitted in the gallery.

Representatives
of
Florida House



Krista.Ziehler@myfloridahouse.gov
(Pronouns: she/her/hers/ella)

(850) 717-5049

1402C | 402 South Monroe Street
Tallahassee, FL 32399-1300

(407) 681-5433

4063 N. Goldenrod Road | Unit 3
Winter Park, FL 32792

Rep. Carlos Guillermo Smith | District 49
Legislative Aide to

Krista Ziehler

Handwritten: @GMAV (NE)



FLORIDA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

COMMISSIONER NICOLE "NIKKI" FRIED

WWW.FDACS.GOV

NATHAN BRUEMMER

LGBTQ CONSUMER ADVOCATE
OFFICE OF THE COMMISSIONER

Handwritten: TRANSGENDER - w/ Carol Smith

(850) 879-2790 CELL
NATHAN.BRUEMMER@FDACS.GOV

THE CAPITOL
PLAZA LEVEL 10
400 SOUTH MONROE STREET
TALLAHASSEE, FL 32399-0800

SB 1834 replicates changes to education enacted by Nazi Germany in the 1930s.

This law will:

1. Establish a single point authority for education.
2. Require teachers to follow a single point authority.
3. Alter school curricula to promote propaganda.

In 1934, the [National Socialist] government [of the Weimer Republic] dissolved parents' councils and *reinstated school headmasters as the central authorities* (1) for school districts. Later laws such as the 1937 Civil Service Act formally *required teachers to follow* the government's orders and promote Nazi *ideology unquestionably* (2). Between 1938 and 1942, the government passed dozens of laws that continued to consolidate power in the national government, reduce the number of schools, and *alter curricula to promote* racial sciences and other *propaganda* (3). [Ian R. James. "Education in Nazi Germany" in *The Cupola*, Gettysburg College, Spring 2019 p.12]

Voters in your district will not support one espouses Nazi ideals.

Not only will future generations be hurt by any one who supports this anti-American and un-democratic law –

Your future in politics is at stake too.

SB 1834 is *un-democractic & anti-American*



POLITICS

Businesses oppose Florida's 'Don't Say Gay' ban on discussion of LGBTQ issues in public schools

PUBLISHED TUE, MAR 29 2022 2:11 PM EDT UPDATED THU, MAR 31 2022 9:12 AM EDT

**Annika Kim Constantino**
@ANNIKAKIMC

WATCH LIVE

KEY POINTS

The Florida measure rocketed to the forefront of national politics in recent months, drawing sharp criticism from the LGBTQ community, Hollywood, Democrats and the White House.

Its passage comes as a flurry of anti-LGBTQ bills advance in several states, leaving advocates fearful that already marginalized groups are at risk of harm.

DeSantis said he backed the bill because parents' rights are "increasingly under assault around the nation, but in Florida we stand up for the rights of parents and the fundamental role they play in the education of their children."

In this article

IHG-GB -44.00 (-0.87%)

ORCL -0.16 (-0.20%)

UAL -0.13 (-0.35%)

H -0.06 (-0.07%)



Florida Gov. Ron DeSantis on Monday signed legislation banning the discussion of sexual orientation or gender identity in the state's public schools, a controversial policy that opponents dubbed the "Don't Say Gay" bill.

[The Walt Disney Company](#) immediately [condemned the legislation](#) and vowed to help get it repealed. Opposition among business leaders has been slowly building momentum this month as the bill moved through Florida's Republican-controlled Senate. [Starbucks](#), [Nordstrom](#) and [Pinterest](#) are among 45 companies that earlier this month quietly signed on to a two-year-old petition broadly condemning anti-LGBTQ legislation.



VIDEO 01:05



according to the [latest version of the petition](#) published by advocacy groups Human Rights Campaign and Freedom for All Americans. [Sony Interactive Entertainment](#), [Deutsche Bank USA](#), [Hyatt Group Hotels & Resorts](#), Yahoo! and Shutterstock also added their names in recent weeks to the petition, which has more than 200 signatures.

The Florida measure rocketed to the forefront of national politics in recent months, drawing sharp criticism from the LGBTQ community, Hollywood, Democrats and the White House. Its passage comes as a flurry of anti-LGBTQ bills advance in several states, leaving advocates fearful that already marginalized groups are at risk of harm.

DeSantis said he backed the bill because parents' rights are "increasingly under assault around the nation, but in Florida we stand up for the rights of parents and the fundamental role they play in the education of their children."

He said parents also "should be protected from schools using classroom instruction to sexualize their kids as young as 5-years-old," according to a statement released by his office.





Formally titled the “Parental Rights in Education” bill, the new law takes effect in July. It [prohibits](#) classroom “discussion about sexual orientation or gender identity” in kindergarten through grade three or “in a manner that is not age-appropriate.”

The bill also gives parents the right to pursue legal action if they believe a school’s procedures are infringing on their “fundamental right” to make decisions related to the “upbringing and control of their children.”

DeSantis, the bill’s sponsors and other Republicans have [claimed that the measure is necessary](#) to give parents oversight over what students learn and discuss at school, calling it “inappropriate to be injecting those matters like transgenderism in a kindergarten classroom.”

But opponents have argued that the Florida bill is vaguely worded and that it could give way to lawsuits from parents who believe any conversation about LGBTQ people or issues is inappropriate.

LGBTQ advocates slammed the new law.

Human Rights Campaign said DeSantis “once again placed Florida squarely on the wrong side of history, and placed his own young constituents directly in harm’s way — and he has done this for no other reason than to serve his own political ambitions,” according to [a statement](#) released by the group.

“We’re staring at a new reality where LGBTQ+ students may wonder if they’re allowed to even acknowledge their own sexuality or gender identity; a reality where young people with LGBTQ+ family members may be forced to remain silent while others can speak freely; a reality where LGBTQ+ school staff may be forbidden from so much as mentioning their loved ones,” interim President Joni Madison said in the statement.

The human rights group also pointed to data showing that LGBTQ youth already face “real threats and obstacles to overcome,” such as high rates of bullying, harassment and assault at school.



Revelers celebrate on 7th Avenue during the Tampa Pride Parade in the Ybor City neighborhood on March 26, 2022 in Tampa, Florida. The Tampa Pride was held in the wake of the passage of Florida's controversial "Don't Say Gay" Bill.

Octavio Jones / Getty Images

Many of the nearly four dozen companies that signed the [petition](#) this month have been relatively quiet on the recent wave of anti-LGBTQ legislation in the U.S. so far. Their signatures come as Disney faces sharp backlash for its [initial silence](#) on the Florida bill.

"The current political climate across the country is so toxic when it comes to protections for our community and Florida is not immune," said Nadine Smith, executive director of Equality Florida, in a press release about the petition.

"It is vital that the businesses that uplift values of diversity and inclusion of the LGBTQ+ community by participating in our Pride celebrations, leverage their voices in a time when our community is under attack," Smith said.

Human Rights Campaign and Freedom for All Americans first published the petition in 2020 to address dozens of anti-LGBTQ bills introduced across the U.S. at the time.

The petition garnered support from around [44 companies](#) by March of that year, including tech giants [Google](#), [Apple](#), [Amazon](#), and [Microsoft](#), as well as companies such



more than [50 companies](#).

Signatures tripled to more than 150 by the beginning of 2022 state sessions in January, according to Jessica Shortall, vice president of corporate engagement at Freedom for All Americans.

The petition also saw an uptick in signatures during February and March this year.

Several companies “with a major presence in Florida” added their names to the petition on Feb. 28, just days after the [state House passed](#) the “Don’t Say Gay” bill. Among the new signatories were [United Airlines](#), [Oracle](#) and [IHG Hotels & Resorts](#), which all represent tens of thousands of employees in Florida, [according to Human Rights Campaign](#).

Shortall said it wasn’t Florida’s bill alone that prompted companies to lend their support. Lawmakers in Alabama, Iowa, Texas and Arizona have all recently introduced or adopted anti-LGBTQ policies.

The [Alabama state Senate passed legislation making](#) it a crime to provide gender reassignment medical services to transgender youth last month. Texas Gov. Greg Abbott in late February also instructed Child Protective Services to open child abuse investigations into parents who provide gender-affirming care to their transgender children, she added.

At the beginning of March, Iowa became one of the [latest states to pass a ban](#) on transgender student-athletes playing sports consistent with their gender identity. The Arizona House on Thursday [passed a similar bill](#) that seeks to ban transgender children from playing sports alongside their peers, just three weeks after the state Senate passed it.

“So much attention has been on the Florida bill. But from around the end of February to March the Texas situation and countless other efforts to attack LGBTQ people have been ongoing,” Shortall said.

CONTACT US

By phone: 813-870-3735

By mail:

P.O. Box 13184

St Petersburg, FL 33733

You can leave a message using the contact form below.

Your name

DR. BRIAN SMITH

Your email address

BRIANSMITHDC@AOL.COM

Subject

SB1834

Message

I have an approach to the assumed signing of SB1834 by the governor that places the issue of gender-identity in a different light than what the authors of the bill intended. It has taken the form of a complaint addressed to a school board regarding the education being taught. As I have no school-age children, my standing as an interested party is questionable and I am hoping to locate someone with a child affected by the soon-to-be law that would be willing to submit the complaint. Luckily, with the surname of Smith I can submit it to Theresa Jacobs (who has already heard from me about adopting procedures to blunt or nullify the effect of this Bill before it becomes law) under my own name and let the school board identify my 'child' but it is an issue they will have to deal with anyway.

I also have a statement written to the Commissioner of the FL BoE which is labeled as a legal notice informing the Commission of certain facts based on research that, once the Commission has been informed, it becomes much more problematic to enforce this law due to the wording of the bill which refers actions of a "reasonably prudent" person and, being informed of the research findings, the Commission

CAPTCHA

This question is for testing whether or not you are a human visitor and to prevent automated spam submissions.

28 March 2022

Richard Corcoran, Education Commissioner of Florida
Florida Department of Education
325 West Gaines Street
Tallahassee, Florida 32399

I attest to having submitted the attached two-page Notification to the Florida Department of Education on or before 1 April 2022.

The Department may, at their discretion, conform to notification requirements contained therein by submitting a true and unaltered copy of this Notice to all institutions that fall within their jurisdiction. The Department shall maintain proof of such notifications being received by their intended parties no later than 1 June 2022 in order to deflect their responsibility to pay any and all damages awarded by any court as indicated in this Notice. Failure to do so shall establish the cause required for the Department to be legally responsible for all penalties, fines, awards, damages, or any other remuneration in any legal action.

A handwritten signature in dark ink, appearing to read "Brian A. Smith", is written over a light gray rectangular background.

Dr. Brian A. Smith (retired)
12746 Parkbury Drive
Orlando, Florida 32828

Notification

This notice satisfies all requirements and shall be considered to be a legal notice as required under any statute, rule, law, or ordinance in all jurisdictions of the United States. The date of receipt of this Notice by the Florida Department of Education shall be 1 April 2022 in all jurisdictions and courts of law.

Recently the *Parental Rights in Education* bills (HB 1557 and SB 1834) have been enacted as amendments to s. 1001.42, F.S. to take effect 1 July 2022 and signed into law on 28 March 2022.

Paragraph (c) added to subsection (8) STUDENT WELFARE of section 1001.42, Florida Statutes, includes subparagraph 2. which describes information on a student which can not be withheld from parents. Within subparagraph 2. is found “..., *unless a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect, as those terms are defined in s. 39.01*...”

Accordingly, you are hereby notified of the following:

1. Under the restriction imposed by the amended law, all public school employees are barred from contacting the parent or guardian of any public school student in the State of Florida regarding sexual orientation or gender identity. All employees, and by extension all public school districts are barred from entertaining, discussing, or acting upon any request from a parent or guardian of a student that involve sexual orientation or gender identity issues. Being barred from such discussion, school districts can not take any action or respond to any requests that pertain in any manner whatsoever to these two areas.
2. The Florida State Board of Education is hereby notified that research clearly demonstrates that LGBTQ+ youth are at a much higher risk of suffering physical and mental harm or abuse in their home situation than are the population of non-LBGTQ+ youth. The study “*Rates of depression in LGBTQ communities by State*” [helpadvisor.org] reveals that Florida ranks among the ten worst States in the country with almost one-third of LBGTQ+ residents experiencing “*depression every day*” over the time period of this 2021-2022 study. Nationally, nearly two-thirds of LBGTQ+ youth experience “*depression every day*”. It is a well-established fact that the rate of suicide among LBGTQ+ youth is twice as high as the rates of suicide of non-LBGTQ+ youth and that LBGTQ+ youth experience higher rates of physical and mental abuse in their home setting.
3. *A reasonably prudent person* accepts the results of scientific studies and must accept the conclusions given in 2. above as being factual and shall be considered to either (a) *believe* that issues of sexual orientation and gender identity will result in a higher incidence of abuse of students or (b) not included in the definition of *a reasonably prudent person*.

As a result of being notified of the above facts before 1 April 2022, it is the responsibility of the Florida State Department of Education to properly notify every school district and educational institution under their jurisdiction that the amended section 1001.42, Florida Statutes, prevents all schools from discussing, enacting, or promoting any procedures or policies that attempt to suppress all activities, programs, or curricula that pertain to sexual orientation and gender identity.

The Florida Department of Education assumes the responsibility to pay the financial damages awarded by any court having jurisdiction originating with the filing for declaratory relief enjoined under the paragraphs of law whose genesis are the bills SB 1834 and HB 1557 or any other such legal action. The Department will pay any fines, penalties, and awards levied against any employee of a school or school district, any school district board member, any school board, and any school or educational institution awarded by a court or through arbitration. The Department will hold harmless any person or entity prosecuted under this section of Florida Statutes and will actively suppress any attempt by any court to enforce payment of any damages by any entity by filing for declaratory relief within five days of gaining knowledge of any such attempt to collect.

If the Department can prove that any particular party to a legal action was duly notified of the contents of this Notice by the date stipulated below, their financial responsibility will be limited to only that portion deemed to be theirs as determined by a court of law with the remainder being returned to the responsible party in the amount as determined by the court.

If any person subject to the authority of the Florida Department of Education and is impacted by the amended laws originating with SB 1834 and HB 1557 suffers a loss of life whether through their own actions or at the hands of another, the estate and any survivor of that person can take whatever legal action is required to prosecute the Department of Education in a *wrongful death* claim.

The Florida Department of Education shall notify all entities under their jurisdiction of the contents of this Notice no later than 1 June 2022 and shall maintain a record of proof of notification that will be made available to any requesting party.

This Notice is primary and nullifies, revokes, or otherwise quits any regulation, statute, ruling, policy, procedure, or law currently in effect that is in conflict with this Notice automatically without the need for any other process or procedure being required to establish precedence.

Congress of the United States
Washington, DC 20515

February 21, 2022

The Honorable Wilton Simpson
President of the Florida Senate
409, The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Chris Sprowls
Speaker of the Florida House of Representatives
420, The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear President Simpson and Speaker Sprowls:

We write today regarding two bills being considered by the Florida Legislature, misleadingly titled “Parental Rights in Education” (HB 1557 and SB 1834). Under this legislation, schools would be barred from classroom discussions about sexual orientation or gender identity in kindergarten through third grade, and more vaguely prohibit it in any “manner that is not age-appropriate or developmentally appropriate.” Furthermore, the bills open the floodgates to frivolous lawsuits by parents seeking to restrict the acknowledgement of LGBTQ+ identities in school. In the interest of academic freedom and the mental health of students, we urge you to oppose these bills and not allow them to come to the floor of the Florida House or Senate for a vote.

The ACLU is currently tracking nearly 150 active state bills that discriminate against the LGBTQ+ community, five of which are moving through the Florida Legislature.ⁱ While all of these bills threaten LGBTQ+ civil rights, HB 1557 and SB 1834 are additionally egregious due to their disastrous implications for the principles of free speech and freedom of expression and attack the very core of American constitutional democracy. Unfortunately, these bills continue to receive national attention since they have advanced in the legislative process beyond similar bills in other states seeking to restrict LGBTQ+ rights in education.

Under the guise of parents’ rights, these two bills fit into an alarming trend of rising threats to academic freedom and American children’s right to a comprehensive education. Contrary to assertions by the bills’ supporters that discussions of sexual orientation and gender identity are inappropriate for schoolchildren, **the American Psychological Association and the National Association of School Psychologists recommend that K-12 schools acknowledge sexual and**

gender diversity and “create policies that directly improve, *affirm*, and support the health and wellbeing of gender and sexual diverse children and adolescents of all ages.”ⁱⁱ

LGBTQ+ youth face a wide breadth of unique barriers to mental wellbeing as they venture to openly embrace their identities and seek acceptance from peers and adults, including their parents and teachers. According to the Trevor Project’s 2021 National Survey on LGBTQ Youth Mental Health, the overwhelming majority of LGBTQ+ youth reported symptoms of generalized anxiety and major depressive disorder.ⁱⁱⁱ The rising politicization of LGBTQ+ schoolchildren’s lives – and transgender and nonbinary youth in particular – has only worsened recently, with 94% reporting that “recent politics negatively impacted their mental health.” **Critically, LGBTQ-inclusive curricula improved mental health outcomes, and LGBTQ+ youth in a school environment that affirmed their identities – rather than erasing or rejecting it – were 33% less likely to report attempting suicide.**^{iv}

Florida schools already fail to provide a safe environment for LGBTQ+ students, with one survey of secondary students in Florida finding that 61% experienced at least one form of anti-LGBTQ discrimination.^v A new law silencing LGBTQ+ students and inciting a culture of fear around the discussion of LGBTQ+ identities will only serve to further degrade the poor state of LGBTQ+ youth mental health.

Schools must be institutions that foster learning, innovation, and growth – not secrecy and intimidation.

Whether students identify as a part of the LGBTQ+ community or not, they deserve to hear the stories of Bayard Rustin, a Black gay man who helped organize the 1963 March on Washington, and Marsha P. Johnson, a Black transgender activist who was a prominent figure in the Stonewall uprising. They should also learn about landmark Supreme Court cases like *U.S. v. Windsor* and *Obergefell v. Hodges* – and the loving same-sex couples behind these victories – which drastically advanced justice and equality for LGBTQ+ people in the United States.

An education that lacks these fundamental details of the history of American civil rights is one that is incomplete.

LGBTQ+ kids *must not* be a pawn exploited in today’s political discourse – not in Florida, nor any other state in our nation. We ask that you consider the harmful toll this legislation would have on LGBTQ+ children’s mental health and individual liberties in education, oppose these bills, and do not bring them to a vote on the floor of the Florida House or Senate.

Sincerely,



Debbie Wasserman Schultz
Member of Congress



Jan Schakowsky
Member of Congress



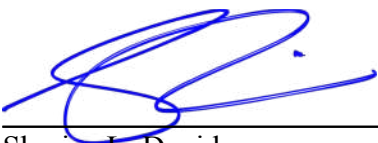
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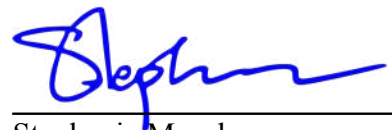
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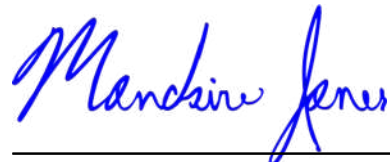
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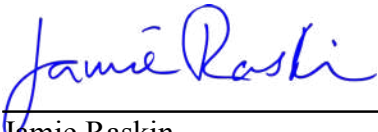
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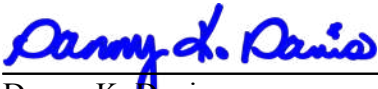
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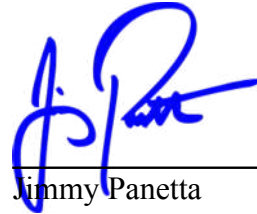
Jamie Raskin
Member of Congress



Dwight Evans
Member of Congress



Danny K. Davis
Member of Congress



Jimmy Panetta
Member of Congress



Ruben Gallego
Member of Congress

CC:

The Honorable Ron DeSantis, Governor of Florida

The Honorable Debbie Mayfield, Florida Senate Majority Leader

The Honorable Lauren Book, Florida Senate Minority Leader

The Honorable Michael Grant, Florida House Majority Leader

The Honorable Evan Jenne, Florida House Minority Leader

ⁱ American Civil Liberties Union. “Legislation Affecting LGBTQ Rights Across the Country.” February 11, 2022. <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>

ⁱⁱ American Psychological Association. “APA RESOLUTION on Supporting Sexual/Gender Diverse Children and Adolescents in Schools.” February 2020. <https://www.apa.org/about/policy/resolution-supporting-gender-diverse-children.pdf> *Emphasis added.*

ⁱⁱⁱ The Trevor Project. “National Survey on LGBTQ Youth Mental Health 2021.” <https://www.thetrevorproject.org/survey-2021/>

^{iv} In addition to the Trevor Project’s survey, see also research by GLSEN: “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

^v GLSEN. “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

From: briansmithdc@aol.com,
To: Tom.Grady@fldoe.org,
Subject: Legal Notice copy attached
Date: Tue, Apr 19, 2022 11:45 am
Attachments: FLDoE 0328 Legal Notice.pdf (1118K)

Mr. Tom Grady, Chair
Florida State Board of Education

The attached Legal Notice was sent to Richard Corcoran, Education Commissioner of Florida on 28 March 2022. A copy is attached for your notification.

Respectfully,

Dr. Brian A. Smith (ret)
407.457.2800



Florida Legislators Threaten to Repeal Reedy Creek Improvement Act in Disney World



By Sara McOmber

Posted on **March 30, 2022**

Tensions between the Walt Disney Company and some Florida politicians are high right now due to the recent controversy surrounding the “Don’t Say Gay” bill, which has now been signed into law.



Pride Banners in Disney Springs

Disney has stated that their current goal as a company is “for this law to be repealed by the legislature or struck down in the courts,” which they intend to accomplish by supporting organizations working towards that action. Some Florida politicians have spoken out against Disney for this statement, **and now it seems**

that there could be action taken against the Walt Disney Company in response to their condemnation of the bill.

Spencer Roach, a Republican member of the Florida House of Representatives, recently tweeted that the House has now met twice to discuss “a repeal of the 1967 Reedy Creek Improvement Act, which allows Disney to act as its own government.”

Yesterday was the 2nd meeting in a week w/fellow legislators to discuss a repeal of the 1967 Reedy Creek Improvement Act, which allows Disney to act as its own government. If Disney wants to embrace woke ideology, it seems fitting that they should be regulated by Orange County. pic.twitter.com/6sj29Gj6Wz

— SpencerRoach (@SpencerRoachFL) March 30, 2022

So what would this mean for Disney? First, let's take a look at what the Reedy Creek Improvement Act really is. This act created the Reedy Creek Improvement District (RCID), which is a multi-purpose district that provides essential public services; regulates building codes, land use, and environmental protections; and tries to provide direction for the efficient operation of Walt Disney World property. For all intents and purposes, **it's a distinct governing body that functions only in Disney World.**



Reedy Creek Fire Department

The RCID was created in 1967 when Disney wanted to build a new theme park (Disney World) in Central Florida. The land they wanted to use was located in both Orange and Osceola Counties, and it was pretty

much in the middle of nowhere. The nearest power and water lines were at least 10 miles away. Neither Orange County nor Osceola County had the resources to bring Disney's vision of a new theme park to life, so Florida State Legislature created RCID — a special taxing district “that would act with the same authority and responsibility as a county government” (RCID).

With this special district, Disney is responsible for paying for things like power, water, roads, and other municipal services on their property — hence the distinct road signs you'll see when you enter Disney World. That means that local taxpayers in the area don't have to pay for these maintenance services that take place inside Disney World.



Heading into Disney World!

It also means that Disney is free to try more innovative construction projects, such as using fiberglass as the main material to build the Cinderella Castle or installing the huge waste disposal system that runs underneath Magic Kingdom.



Cinderella Castle

If the Reedy Creek Improvement Act were to be repealed, it's possible that Disney could lose some of the freedom they enjoy as a separately governed entity. From what we know right now, it would take a lot more action for the Florida legislature to repeal this law, and they haven't officially begun this process yet.

Keep following AllEars for more updates on the latest Disney news.

[CLICK HERE TO LEARN MORE ABOUT THE REEDY CREEK IMPROVEMENT DISTRICT.](#)

[JOIN THE ALLEARS.NET NEWSLETTER TO STAY ON TOP OF ALL THE BREAKING DISNEY NEWS! YOU'LL ALSO GET ACCESS TO ALLEARS TIPS, REVIEWS, TRIVIA, AND MORE! CLICK HERE TO SUBSCRIBE!](#)

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STATE

Disney v.s. Florida: Self-governing Status Threatened After Weighing in on “Don’t Say Gay”

May 18, 2022

On March 8, Florida lawmakers passed HB 1557, known to its supporters as

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the Parental Rights in Education bill and to opponents as the Don't Say Gay bill.

Officially signed by Gov. Ron DeSantis on March 28, the legislation sparked controversy for the potential to restrict safety and support for LGBTQ+ students, drawing reactions from parents, teachers, organizations and most recently — companies.

Disney is one of the first companies to receive backlash from Republican lawmakers after voicing opposition to the law. The backlash involves an attempt to dismantle the Reedy Cree Improvement District, despite potential issues involving the district's debt.

The law

Introduced and sponsored by Rep. Joe Harding, R-Ocala, the law requires a school district to notify a student's parents of information concerning a child's upbringing and prohibits instruction about gender identity and sexual orientation in kindergarten through third grade. Conversations about such topics must be age-appropriate for all grades.

On July 1, the law will be implemented and start to impact Florida classrooms.

The National Center for Lesbian Rights is one of the organizations currently filing a lawsuit against the state over the bill on behalf of Family Equality, Equality Florida, teachers and parents. The lawsuit involves defending free speech and equal protection rights.

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However, the dozens of major corporations who have also opposed the bill display a general understanding of the long-lasting impacts on LGBTQ+ youth’s mental health and well-being the bill will have, Imani Rupert-Gordon, the NCLR Executive Director, said in a statement.

“Any political threats against specific companies that oppose this heinous new law are just red herrings to obscure the real dangers this type of legislation poses for our most vulnerable youth,” she said.

Supporters of the law argue that parental rights must be reinforced, emphasizing parents’ rights in critical decisions about their children. Republican lawmakers like Sen. Dennis Baxley, R-Ocala, and Harding assert that gender identity and sexuality are inappropriate topics for classroom discussion in kindergarten through third grade.

Disney’s response

Upsetting lawmakers and stirring controversy, Disney tweeted in response to the “Don’t Say Gay” bill on March 28, stating the bill “should never have passed and should never have been signed into law.”

Initially, Disney did not publicly express opposition to the legislation, staying neutral. Facing criticism for not speaking out about the legislation despite being a major corporation with strong ties to Florida, Disney expressed hope for the bill to be repealed after being signed into law.

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Republican lawmakers' response

DeSantis responded to Disney's callout in a press conference one day later.

"For Disney to come out and put a statement and say that the bill should have never passed and that they are going to actively work to repeal it, I think, one, was fundamentally dishonest but two, I think that crossed the line," he said.

DeSantis criticized Disney for acting as a "woke" corporation and threatened to revoke the company's self-governing powers, granted by the Reedy Creek Improvement Act.

The Reedy Creek Improvement District allows Disney to regulate its own land. This act, passed in 1967, aimed to foster economic growth and tourism, incentivizing Disney to come to Florida. The Reedy Creek Improvement District has authority over its emergency services, public roadways and building codes.

Before Disney spoke out against the "Don't Say Gay" bill, the company donated \$190,000 to support Republican lawmakers in Florida, though the company has now paused donations amid the controversy.

Several Republican representatives including Harding and Randy Maggard, R-Pasco, have returned thousands of dollars in campaign contributions in light of Disney's response.

Last week, lawmakers in the state were successful in eliminating the Reedy Creek Improvement District, revoking Disney's power to

July 2021

June 2021

May 2021

April 2021

March 2021

February 2021

January 2021

December 2020

November 2020

October 2020

September 2020

August 2020

July 2020

June 2020

March 2020

February 2020

January 2020

December 2019

November 2019

October 2019

September 2019

govern themselves and the district's special tax status. This change will go into effect in June 2023.

Disney's impact on Florida

Revoking Disney's self-governing powers could affect many Floridians. Disney employs approximately 80,000 Florida workers in their vast array of theme parks in Orlando.

Disney is the largest employer in Florida and a strong part of Florida's economy. Until now, Disney's economic influence in the state has given the company enormous power to govern itself and pursue its interests without opposition from lawmakers.

Other companies opposing the law

Disney's public denouncing of the "Don't Say Gay" bill is the first of a continuing trend of companies voicing their stance on policies.

Days after the bill passed, several other companies followed Disney's lead by publicly opposing the bill. United Airlines, Oracle and IHG Hotels & Resorts are a few of the companies with a large presence in Florida that signed a petition opposing the new law.

Several other states have proposed bills similar to Florida's bill. Texas, Ohio and Louisiana plan to introduce their versions of the controversial Parental Rights in Education law, prompting more companies to add their name to the petition.

April 2019

March 2019

February 2019

April 2018

March 2018

December 2017

November 2017

October 2017

September 2017

June 2017

May 2017

April 2017

March 2017

The Reedy Creek Improvement District has about \$1 billion worth of bond debt, which can potentially obstruct Republican lawmakers' plans to dismantle the district. Some are concerned that the debt would become the responsibility of Orange and Osceola counties.

If the bond debt were to fall on these two counties, residents of the counties could experience an increase in taxes, suggesting that the district cannot be dissolved until the bond debt is paid off.

As of May 11, a U.S. district judge ruled that Florida taxpayers cannot bring a lawsuit against the state-mandated dissolution of the Reedy Creek Improvement District. It increasingly appears to be up to Disney, and Disney alone, whether or not it will be possible to block the law

Either way, the Parental Rights in Education law is likely to remain the law of the land.

Walt Disney World Entrance in Florida.
(Unmodified photo by Denis Adriana Macias used under a Creative Commons license.
bit.ly/37WKyBg)

Check out other recent articles from the Florida Political Review here.

By Kelly Miller

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Here's the Latest on the Dissolution of Disney's Reedy Creek Improvement District



By Cassie Agundes
Posted on **July 17, 2022**

The Walt Disney Company has been experiencing some political pushback following their condemnation of Florida's Parental Rights in Education bill.



Rainbow Mickey Plush

Previously, we've seen Florida politicians, including Gov. Ron DeSantis, move to dissolve the Reedy Creek Improvement District. The dissolution of Reedy Creek will remove many creative and expansive freedoms

for Disney, while potentially placing the burden of maintenance costs on taxpayers. And now, we have an update on this situation.

The dissolution of Reedy Creek is expected to take place by June 2023, leaving many residents wondering what that will mean for them — even inspiring some to take legal action. And, according to an [Orlando Business Journal](#) article, experts are also speculating that tax burdens may fall on residents in Orange and Osceola counties, potentially surpassing \$1 billion in debt and costs.



©Reedy Creek

In terms of moving forward, DeSantis has confirmed he's working on new legislation regarding the district, although no details beyond that have been shared. The article also points to an event at Seminole State College where DeSantis announced that local governments would not be allowed to take control, leaving the state to assume control, regulate laws, and collect taxes.



Reedy Creek Fire Marshal Sign in Disney World

There still aren't specific plans for the dissolution, but we know it won't be effective until June 1st, 2023 (according to the bill). However, according to Bryan Griffin, a spokesman with DeSantis' office, the debts of Reedy Creek will not fall on the local residents, and they'll share more in the future.



Reedy Creek trash cans in Disney Springs

Most experts find the ambiguity of the dissolution and its troubling logistics to be concerning. This has some experts, like Chad Emerson, author of the book “Project Future: The Inside Story Behind the Creation of Disney World,” pointing to keeping Reedy Creek as the best solution for citizens, workers, and Florida businesses.



Magic Kingdom

UPDATE: The Director of Florida's Division of Bond Finance, Ben Watkins, has said that there will probably be a successor district created by Florida lawmakers, according to [Bloomberg](#). This district would take on most of the power to perform municipal functions that the Reedy Creek district holds right now. It would also take on its debts.

Watkins said that it is also to be expected that the previously-granted powers given to the district that were never used will not be authorized, like operating a nuclear power plant. He also said that Gov. DeSantis' office has been supportive of the idea of a successor district, but legislators do have the final say in what will happen.



Tower of Terror

There is still another lawsuit filed by Central Floridians regarding the potential tax implications, which is expected to be heard in late July or August. We'll update you when there's more movement on the lawsuit, as well as the dissolution of Reedy Creek.

In the meantime, to understand this situation better, take a look at Disney's response to Florida's Parental Rights in Education bill. Then, [check out the reaction from Florida politicians, which included the inspiration to dissolve Reedy Creek.](#)



Disney Décor During Pride Month

We'll continue to bring you the latest Disney updates, so stay tuned to AllEars.

FLORIDA WILL LIKELY TAKE CONTROL OF REEDY CREEK IMPROVEMENT DISTRICT

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

EQUALITY FLORIDA; FAMILY
EQUALITY; M.A., by and through
his parent AMBER ARMSTRONG;
ZANDER MORICZ; LINDSAY
MCCLELLAND, in her personal
capacity and as next friend and
parent of JANE DOE; RABBI AMY
MORRISON and DR. CECILE
HOURY; DAN and BRENT
VANTICE; LOURDES CASARES
and KIMBERLY FEINBERG;
LINDSEY BINGHAM SHOOK; and
ANITA HATCHER POWDERLY,

Plaintiffs,

v.

RONALD D. DESANTIS, in his
official capacity as Governor of
Florida; FLORIDA STATE BOARD
OF EDUCATION; THOMAS R.
GRADY, BEN GIBSON,
MONESIA BROWN, ESTHER
BYRD, GRAZIE P. CHRISTIE,
RYAN PETTY, and JOE YORK, in
their official capacities as members
of the Board of Education;
RICHARD CORCORAN, in his
official capacity as Commissioner of
Education of Florida; FLORIDA
DEPARTMENT OF EDUCATION;
SCHOOL BOARD OF MANATEE
COUNTY; SCHOOL BOARD OF
SARASOTA COUNTY; SCHOOL
BOARD OF MIAMI-DADE
COUNTY; ST. JOHNS COUNTY

Civil Action No. _____

COMPLAINT

JURY DEMAND

SCHOOL BOARD; and JACKSON COUNTY SCHOOL BOARD, Defendants.
--

INTRODUCTION

1. Florida House Bill 1557 (widely known as the “Don’t Say Gay” law) is an unlawful attempt to stigmatize, silence, and erase LGBTQ people in Florida’s public schools. It seeks to do so by imposing a sweeping, vague ban covering any instruction on “sexual orientation and gender identity,” and by constructing a diffuse enforcement scheme designed to maximize the chilling effect of this prohibition.

2. Through H.B. 1557, Florida would deny to an entire generation that LGBTQ people exist and have equal dignity. This effort to control young minds through state censorship—and to demean LGBTQ lives by denying their reality—is a grave abuse of power. The United States Supreme Court has repeatedly affirmed that LGBTQ people and families are at home in our constitutional order. The State of Florida has no right to declare them outcasts, or to treat their allies as outlaws, by punishing schools where someone dares to affirm their identity and dignity.

3. H.B. 1557 piles one violation on top of another. It offends principles of free speech and equal protection by seeking to censor discussions of sexual orientation or gender identity that recognize and respect LGBTQ people and their families. It offends due process by using broad and vague terms to define its

prohibitions—thus inviting discriminatory enforcement and magnifying its chilling effect on speech. And it arises from discriminatory purposes and outdated sex-based stereotypes that offend deeply rooted constitutional and statutory requirements.

4. To start, the law is clearly the product of animus towards Florida’s LGBTQ community. The bill’s sponsor in the Senate has stated that the law is meant to prohibit discussion of sexual orientations and gender identities that do not comport with Florida’s supposed “core belief systems and values.” He has also stated that the bill is intended to prevent students “coming out in school” to their peers from being treated as “celebrities.” The premise of these statements is fear that LGBTQ students might live their true identities in school and be met with acceptance rather than state-sanctioned hostility targeting their protected characteristics.

5. This legislative purpose is reflected in H.B. 1557’s statutory structure. By its plain terms, H.B. 1557 subjects school districts to the threat of costly litigation if “school personnel” or “third parties” provide “classroom instruction” on “sexual orientation” or “gender identity” for students K-3, or where such instruction is not “age-appropriate or developmentally appropriate according to state standards.” The meaning of “classroom instruction” on “sexual orientation” and “gender identity” is subject to intractable uncertainty and disagreement, yet the statute’s drafters made a considered choice not to include definitions for any of these terms. The State need not even adopt “standards” until one year after the law goes into effect. But from

the very outset, any parent can file suit if they believe that a school has violated these expansive, nebulous prohibitions. In this respect, H.B. 1557 recruits every parent as a roving censor, armed with a legal warrant to sue schools for damages whenever they believe a teacher, a student, or any “third party” has provided any “classroom instruction” that may be perceived as relating to “sexual orientation” or “gender identity.” The potential for arbitrary and discriminatory enforcement here is self-evident—and it reflects a choice designed to maximize the law’s *in terrorem* effects. H.B. 1557 thus operates in a manner antithetical to reasonable requirements of an age or developmentally appropriate education, instead creating a scheme in which parents can use the threat of litigation over vague statutory terms to menace school boards and intimidate teachers into offering a skewed, discriminatory curriculum.

6. While the law’s statutory text is broad and vague, and its enforcement mechanism is deliberately diffuse, its ultimate objective is clear: H.B. 1557 seeks to discourage, deter, and ban any discussion of LGBTQ identities in public schools, while permitting discussion of heterosexuality and non-LGBTQ identities. In so doing, the State promotes a discriminatory dogma in which the only “appropriate” families, students, and teachers are straight and cisgender ones.

7. Indeed, the law’s vagueness and enforcement mechanisms are key to helping it achieve this discriminatory goal: nobody knows exactly what the statutory language covers, but everybody knows that the law’s purpose is to prohibit any

discussion of LGBTQ people and that any aggrieved parent can file a burdensome lawsuit against the local school district, so the safest thing to do in order to avoid liability is for schools to prohibit any acknowledgment that LGBTQ people exist.

8. To appreciate how this dynamic will unfold in practice, just consider how students, teachers, parents, guests, and school personnel might navigate these common questions: Can a student of two gay parents talk about their family during a class debate about civics? Can that student paint a family portrait in art class? Can a lesbian student refer to their own coming out experience while responding to a work of literature? Can a transgender student talk about their gender identity while studying civil rights in history class? What if that occurs in homeroom, or during an extracurricular activity with a faculty supervisor, or in an op-ed in the faculty-supervised school newspaper? Are teachers allowed to respond if students discuss these aspects of their identities or family life in class? If so, what can they say? Do those same limits apply if a teacher intervenes where a student is being bullied or beaten (or mistreated at home) based on their sexual orientation or gender identity? What if students address aspects of LGBTQ identity in essays for which teachers must provide grades and feedback? Speaking of which, can a history teacher educate their students about the history of LGBTQ rights? Can a government teacher discuss *Obergefell v. Hodges*, 576 U.S. 644 (2015)? Can an English teacher make note of queer themes or plots—and can they assign books in which one of the characters (or

their families, or a side character) is LGBTQ? Does the librarian have to remove every book with LGBTQ characters or references? More simply, can a gay or transgender teacher put a family photo on their desk? Can they refer to themselves and their spouse (and their own children) by the proper pronouns? What do they do if a student's same-sex parents visit the class together on career day, or ask to join a field trip? Are those parents forbidden from speaking to the class, on the theory that their very presence somehow instructs students on "sexual orientation"?

9. These questions only scratch the surface of the censorial regime (and the legal quagmire) that H.B. 1557 inflicts on teachers, students, parents, and so many others. By design, H.B. 1557 raises many questions and offers no answers, even as it works an extraordinary government intrusion on the free speech and equal protection rights of students, teachers, and parents in public schools.

10. One might even ask: would it violate H.B. 1557 for a teacher to discuss with their students *this very lawsuit* and the public controversy surrounding H.B. 1557? Under the plain language of the law, the answer might well be "yes."

11. The law's vagueness—and its corresponding potential for unequal and discriminatory enforcement—is made clear by applications that its drafters clearly did *not* see as violations. A teacher who refers to a student's "mom" and "dad," or who presumes the normalcy of opposite-sex attraction while teaching literature, is "instructing" students on "sexual orientation" if H.B. 1557's language is taken at

face value. But the State of Florida clearly has no problem with such run-of-the-mill references to the sexual orientation of non-LGBTQ people. Similarly, a coach who tells the football team to play like “men,” or a teacher who tells students that gender is fixed at birth, has most certainly undertaken to “instruct” their students on “gender identity.” But here, too, H.B. 1557’s drafters surely see no problem. Or consider a still more commonplace example: if a teacher referred to his *opposite-sex* spouse by name, the sponsors of H.B. 1557 would see no issue, but if a teacher referred to his *same-sex* spouse by name, the sponsors of H.B. 1557 might think he broke the law.

12. By design, H.B. 1557 uses vague terms to create a statutory structure in which anyone who discusses or acknowledges any aspect of LGBTQ identity must fear running afoul of the law, while it is simply taken for granted that discussing heterosexuality or cisgender identity in school settings is perfectly fine.

13. The effect of H.B. 1557 is thus to chill the rights of teachers, students, and officials, who, like any rational person, will avoid the danger zone created by a state-mandated censorship code. And H.B. 1557 amplifies its chilling effect by empowering parents to sue school boards, the members of which will similarly be motivated to avoid lawsuits by quelling or punishing any potentially risky speech.

14. All of this is intentional. The goal of H.B. 1557 is not to ensure that instruction on human sexuality is age-appropriate: Florida law *already* does that by requiring that teachers who address “human sexuality” must “[p]rovide instruction

and material that is appropriate for the grade and age of the student.” Fla. Stat. § 1003.46(2)(d). Moreover, efforts to narrow H.B. 1557 to apply to instruction about sexuality or sex acts were repeatedly shot down in the Legislature. So too were efforts to clarify that the law prohibits discussion of *any* sexual orientation and gender identity, not just discussion of LGBTQ identities and issues.

15. The law as adopted is thus discriminatory: it aims at sexual orientations and gender identities that *differ from* heterosexual and cisgender identities. Florida’s lawmakers apparently believe such identities do not have any place in the public school environment—even though gay and transgender students, families, teachers, and officials are part of our public schools (and their communities).

16. The harmful effects of H.B. 1557 are already manifest in public schools across Florida. Faced with the law’s vague prohibitions and threat of litigation, teachers and school administrators have said that they will remove LGBTQ references from the curriculum and no longer foster or participate in discussions that touch upon LGBTQ issues. LGBTQ students and parents are unsure about whether they can express or discuss their identities, and they worry about detention or other possible discipline or exclusion that may result if they do. The subordination and erasure of LGBTQ life that H.B. 1557 seeks to achieve has already begun—and it has already imposed concrete harms on countless children and families in Florida.

17. H.B. 1557 places Plaintiffs and countless others in danger. LGBTQ students already face disproportionality high risks to their mental and physical health. The law not only stigmatizes and silences those vulnerable students, exacerbating risks to their welfare, but also threatens school officials who foster a safe and inclusive environment for them—as they are required to do for all students under the Board of Education’s Code of Ethics. Moreover, H.B. 1557 erases other LGBTQ members of the school community and parents, to the detriment of all.

18. H.B. 1557 serves no legitimate pedagogical purpose. It is motivated by animus against LGBTQ students, families, and teachers of Florida, and those who would accept and support them in schools. By design and in effect, H.B. 1557 will “humiliate[] ... children now being raised by same-sex [and other LGBTQ] couples,” and will make it “even more difficult for [them] to understand the integrity and closeness of their own family and its concord with order families in their community and in their daily lives.” *United States v. Windsor*, 570 U.S. 744, 772 (2013).

19. H.B. 1557 thus reflects an effort by the state to use its power over public schools to demean and deny the existence of people whom the Supreme Court has repeatedly held to be protected. It has no place in a free democratic society.

20. For the reasons set forth herein, the Court should declare that H.B. 1557 violates the First and Fourteenth Amendments to the United States Constitution, and

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (“Title IX”), and enjoin its implementation and enforcement.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution, 42 U.S.C. § 1983, and Title IX.

22. This Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (e), because Defendants are public officials in the State of Florida, are sued in their official capacities, and certain Defendants maintain their principal headquarters in this District. Defendants reside within this District and/or perform official duties within Florida.

23. There is an actual and justiciable controversy between Plaintiffs and Defendants because H.B. 1557 constitutes an immediate infringement on the constitutional and statutory rights of Plaintiffs.

PARTIES

I. Plaintiffs

24. Plaintiffs are organizations, students, parents, and teachers who are already being harmed and will continue to be harmed by H.B. 1557.

Organizations

25. Equality Florida. Plaintiff Equality Florida is a non-profit, public interest organization based in St. Petersburg, Florida. Its goal is to secure equal

rights and protections for the LGBTQ community in Florida, and it is the state's largest LGBTQ rights advocacy group, with more than 400,000 members. Equality Florida brings this action in its own capacity and in an associational capacity on behalf of its members. Its members include LGBTQ students attending Florida public schools, LGBTQ parents whose children attend Florida public schools, non-LGBTQ students who support LGBTQ equality and who attend Florida public schools, LGBTQ teachers who teach in Florida public schools, and non-LGBTQ teachers who support equality and teach in Florida public schools.

26. In furtherance of its mission—which includes fighting discrimination against LGBTQ Floridians—Equality Florida has opposed the passage of H.B. 1557. Equality Florida's mission also includes the Safe and Healthy School Project, which aims to create a culture of inclusion while countering the bullying, harassment, social isolation, and bigotry that increase risk factors for LGBTQ students.

27. Family Equality. Plaintiff Family Equality is a nationwide non-profit, public interest organization headquartered in New York, New York, with more than 900 individuals on its email list in Florida. It brings this action in its own capacity.

28. Family Equality's mission is to advance legal and lived equality for LGBTQ families and those who wish to form them, including by ensuring that families have the support they need in schools. It fulfills its mission by providing resources to and holding events for the LGBTQ community, and through

programming, lobbying, and advocacy work. Family Equality recently adopted a new strategic plan that included as a strategic priority protecting LGBTQ families and youth from discrimination in schools as well as increasing presence in southern states, including Florida.

Students

29. M.A. Plaintiff M.A. is a 17-year-old sophomore at Manatee School for the Arts, a public charter school in Palmetto, Florida. He lives with his mother, grandparents, and cousin.¹

30. M.A. has known that he is gay since a very early age. However, he did not come out to his family and friends until middle school. At the time, his mother could tell that he was struggling. She found out M.A. was gay by reading chats he was having with others online on his video game console.

¹ Looking to its plain text and legislative history, H.B. 1557's applicability to charter schools is unclear—a circumstance that itself will have a chilling effect on those schools' LGBTQ communities. While charter schools are generally exempt from the Florida Early Learning-20 Education Code, they must comply with “statutes pertaining to student health, safety, and welfare.” Fla. Stat. § 1002.33(16)(a)(5). H.B. 1557 purports to relate to students’ “mental, emotional, or physical health or well-being.” It also amends Fla. Stat. § 1001.42(8), a section titled “Student Welfare” containing provisions relating to “health, safety, and other matters relating to the welfare of students.” Fla. Stat. Ann. § 1001.42(8)(a). Finally, Governor DeSantis conducted the bill signing ceremony at a charter school, and his Press Secretary has stated that the law will apply in charter schools. In light of these considerations, while there are good arguments that H.B. 1557 does not apply in charter schools, the State may take the position that it does—a threat that is causing the very injuries identified in this Complaint.

31. M.A.'s mother was very supportive and told him that she loved him no matter what, and all he needed to do was be truthful and open with her. His grandparents were also supportive, even though they are conservative.

32. Sadly, M.A.'s father was a different story. When M.A. was younger, his father told his mother that if their son was gay he "was never going to love him." After M.A.'s mother told his father about M.A.'s sexual orientation, his father initially expressed acceptance, but eventually terminated contact with him and is no longer a part of his life.

33. While M.A. had a (mostly) supportive family, coming out was difficult. He worried that people around him didn't understand what being gay actually meant. He had anxiety attacks at school, and his grades began to suffer. But after his mother found him a private counselor, he became empowered to identify his needs in school and at home, and to advocate for himself and other LGBTQ students.

34. In eighth grade, M.A. decided to start a Gay-Straight Alliance ("GSA") because he knew how important his family's support had been for him and he couldn't imagine what it was like for others who lacked that support. However, when M.A. and his teacher-advisor submitted their application, the school's administration rejected it, claiming that the school's bylaws barred the GSA and the creation of "non-academic organizations," even though there was no such written policy in place and other non-curricular student organizations existed. It took two

years and the threat of legal action with the help of a local advocacy group to get the school to finally permit M.A. and his advisor to start the club.

35. Today, M.A. is the president of his school's GSA, which typically has between 15 and 30 members and creates a welcoming space for other LGBTQ students and their allies. As his mother put it, M.A. "found his voice" through the GSA.

36. Since starting the GSA, M.A.'s grades have improved significantly and he is taking college-level classes. M.A. also participates in Mock Trial and in Manatee Teen Court as a student attorney.

37. Zander Moricz. Plaintiff Zander Moricz is an 18-year-old senior at Pine View School, a public gifted magnet school in Osprey, Florida. His parents are divorced and he mainly lives with his mother and younger brother.

38. Moricz has known he is gay since middle school. At the time, he felt as though he had to constantly hide who he truly was. He would modify his speech and physical gestures and modulate his interests to try to avoid being perceived as gay. He dreaded going to gym class because the boys would tease him in the locker room and call him names like "pussy" and "faggot." Living in this closeted adolescence was deeply debilitating for Moricz at an important time in his life. He never felt like he fit in or belonged at his school.

39. Moricz transferred to Pine View School in sixth grade; he came out as gay during his freshman year. At the time, Moricz wanted to run for president of the freshman class and be a leader for his peers, but he wanted to run only if he could do so without being in the closet. Moricz ultimately decided to run, with support from a friend, and came out to his school and the broader community in the process. To his surprise, Moricz won. He has remained class president for four years.

40. At home, Moricz's family was not at first accepting of his sexuality. It took many difficult conversations for him to feel safe and accepted. But school was different. Moricz has had warm and accepting teachers and friends who embraced him for who he is, and he has had many opportunities at school to express who he is and take pride in his identity.

41. Moricz's ability to be himself at school has allowed him to succeed academically. He has a 5.06 GPA and has taken nearly every Advanced Placement course his high school has offered. He currently serves as the president of his local Model UN chapter. In Model UN, he has won multiple international and national awards, grown his own chapter, and led the largest in-person conference in the club's history. The prior president of Moricz's chapter was also openly gay and served as a role model for Moricz, inspiring him to be himself at school.

42. Moricz is also the Head Debate Captain of the Pine View Speech and Debate Club. He won first place in the Florida Gulf Coast Catholic Forensics League Tournament in the Public Form category two years in a row.

43. Jane Doe. Plaintiff Jane Doe is a fifth-grader at a Florida public school. Doe lives half of the time with her mother (Plaintiff Lindsay McClelland) and her siblings and stepfather in Brandon, Florida. She lives the other half of the time with her father.

44. From around age two, when Doe started expressing herself, it was clear that although she was assigned male at birth, Doe identified as a girl. Doe would regularly tell her parents “I am a girl.” When she started to choose her own clothes and toys, she immediately gravitated towards feminine clothing, nail polish, and dolls. She was also drawn to wearing her mother and grandmother’s shirts, and sought to style them as dresses in order to express herself. On a family trip to Busch Gardens, when Doe was a young child, she was enamored with the female characters, like Abby Cadabby of *Sesame Street*. And when Doe discovered the Disney movie *Frozen*, she was obsessed with the lead princesses, Elsa and Anna.

45. For McClelland, this was all a huge shock. McClelland is a former Command Security Analyst for the United States Marine Corps who grew up in a small town outside of Washington D.C. and was entirely unfamiliar with matters of transgender gender identity.

46. At first, McClelland tried to satisfy Doe by allowing her to wear dress-up costumes in the house as part of a game. But it quickly became apparent that “dress-up” would not be enough for Doe to feel like herself.

47. When Doe was two, her parents bought boys’ clothes—and traditionally masculine toys like trucks and airplanes—for Christmas. As Doe opened her presents on Christmas morning, she looked deflated and sad because she didn’t relate to any of the toys “Santa” had brought. McClelland saw that Doe did not have the same light and joy her sons had that Christmas morning.

48. From that point forward, McClelland realized that she had to embrace who her daughter was. And that is what she did. For Doe’s fourth birthday, the family threw Doe a Rapunzel-themed party and gifted her a Dorothy dress from *The Wizard of Oz*. Doe was ecstatic. At another party, she wore a princess head garland and twirled with joy.

49. As the family started to allow Doe to be herself, they experienced backlash from their community. The family belonged to a large Baptist church in their neighborhood. McClelland and her husband were Bible school teachers and involved in community activities at the church. At a young age, Doe attended Easter morning church services in a dress. Soon after, the ministry reached out and encouraged the family to participate in a form of conversion therapy for Doe. They shared pamphlets on how to “fix” and “change” people like Doe. But McClelland

knew that there was nothing about Doe that needed “fixing,” and she told the church that she would not be participating in their efforts to change or convert Doe. As a result, the family was ostracized from their church community.

50. At the time, McClelland did not know anyone in her community grappling with these issues, so she turned to support networks online. She found a private Facebook group for parents of transgender children, and other parents shared resources with her. McClelland also found an organization in Tampa that provided health and wellness support to LGBTQ individuals, where she learned about the consequences of not supporting a transgender child, which include a high risk of mental health issues, drug abuse, and even suicide.

51. After speaking with her husband and Doe’s father, McClelland decided it was best for Doe’s development and safety to allow her to socially transition to a girl in preschool. Since then, Doe has used female pronouns and presented as female at school. Each year, before the start of school, McClelland speaks with both Doe’s new classroom teacher and the school principal about how to ensure the classroom will be a safe environment for Doe. She informs the teacher of the use of proper pronouns for Doe (she/her) and discusses how best to mitigate any bullying, name calling, or teasing throughout the school year.

52. Despite these efforts, Doe is fearful of being “outed” or bullied. Indeed, even with some support from the school, issues have still arisen. For example, in

Doe's after-school program when she was younger, which took place at her school, the teacher required Doe to be the last or first to use the bathroom to ensure no other girls were in the bathroom with her. This experience ostracized Doe.

53. As she gets older, Doe struggles with how to safely and comfortably navigate her identity in school. Last year, as a fourth grader, Doe came out to her peers at school as transgender. And in January 2022, Doe legally changed her name to conform to her gender identity. Doe wants to live and be her authentic self, a self she has understood and expressed since she was a toddler. But in doing so, she has already faced bullying, name calling, and ostracization. Students have told Doe that she "looks like a boy," and have used her name given at birth to taunt and tease her. Doe does not have a single close friend at school anymore.

Parents

54. Amy Morrison and Cecile Houry. Plaintiffs Rabbi Amy Morrison and Dr. Cecile Houry are a lesbian couple in a domestic partnership. They have been together for about a year.

55. Morrison is a Rabbi at a local temple and Houry works for the City of Miami Beach, managing the Police Department's grants and victim services unit. They live together with their two children.

56. Morrison gave birth to her son in 2014. He is currently in the second grade at Miami Children's Museum Charter School. Houry's daughter was placed

with her as a foster child when she was six days old and legally adopted by Houry a year later. Houry's daughter is currently in preschool and will be entering kindergarten at Miami Children's Museum Charter School next year.

57. Morrison and Houry have raised their children to embrace Morrison's "As You Are" mindset that she espouses in her role as a Rabbi. The children see nothing unique or particularly important about telling someone "My other mom played basketball with me," because they have always been open about their families.

58. Morrison teaches that all individuals should be celebrated—not just accepted—for who they are. The children have no qualms about talking about their two moms because that is the life that they have always known; they haven't been taught to expect or idealize any other family structure.

59. These beliefs carry into life at school, where Morrison and Houry's children talk openly about family. Morrison's son has a picture of the four of them hanging up in his classroom—and on multiple occasions, he has been asked to create drawings of his family, which have included a portrait of his two moms and his sister.

60. Dan and Brent VanTice. Plaintiffs Dan and Brent VanTice are a gay couple who have been together for twenty years and married for fifteen. They live in Saint Johns, Florida, and are the parents of two first-grade boys who go to public

school in the area. Dan is an IT consultant and Brent is a financial services executive.

61. The VanTices are active members of Equality Florida. They are invested in their community, having fought to overturn Florida's bans on gay marriage and gay adoption. They always knew that they wanted to have a family.

62. When the VanTices first decided to adopt, adoption by gay couples was illegal in Florida. As a result, they went to great lengths and expense to work with an adoption agency based in California. Later, after the adoption ban in Florida was overturned, they also began to work with an agency in Florida. In the summer of 2014, they were informed that they would be able to adopt not one but two children. The VanTices were present at both births and have been raising their two sons, who were born just eight weeks apart, ever since. They are committed to their family.

63. The VanTices have always worked hard to communicate to their children that families come in many shapes and sizes, and that their family is no different than any other. They have spoken openly, freely, and lovingly about their family.

64. Lourdes Casares and Kimberly Feinberg. Plaintiffs Lourdes Casares and Kimberly Feinberg are a lesbian couple who have been together for over seventeen years. They married in 2016 when marriage became legal in Florida.

Casares is a clinical psychologist and psychoanalyst, and Feinberg is an anesthesiologist. They live in Miami-Dade County.

65. Casares and Feinberg have a child who is in K-3 at a public school in Miami-Dade County. Both parents are very active in and value the school community, and Feinberg serves on the school's PTA.

66. Lindsey Bingham Shook. Plaintiff Lindsey Bingham Shook is a heterosexual woman who lives with her partner and their daughter, a first-grader at a public elementary school in Miami, Florida. She is an editorial director for a magazine. She is active in the community and involved in numerous non-profit organizations in the Florida area.

67. Shook's daughter has expressed no specific sexual orientation or gender identity. Shook wants her daughter to learn about the diversity of families in her community and to have empathy for all forms of families and identities.

Teachers

68. Anita Hatcher Powderly. Plaintiff Anita Hatcher Powderly is a veteran middle-school English teacher at a public school in Grand Ridge, Florida, where she grew up.

69. Hatcher Powderly approaches her classroom instruction honestly and openly and has discussed issues related to the LGBTQ community—for example, while explaining the relevance of LGBTQ identity and history to the literature and

authors she teaches, and while engaging with students who relate to literature through their own experiences with LGBTQ identity and family. In these and other respects, she has had organic conversations driven by her students related to the LGBTQ community.

70. In light of the passage of H.B. 1557, Hatcher Powderly fears not only that her curriculum is in danger, but also that she lacks any guidance about what she can and cannot do in the classroom. She worries that many of her students will no longer have a critical space to express themselves and obtain support. And she fears that the quality of her pedagogy (and of her students' education) will suffer.

II. Defendants

71. Defendant Ronald D. DeSantis is the Governor of Florida. Governor DeSantis is responsible for signing H.B. 1557 into law and for taking care that the laws be faithfully executed as the Chief Executive of Florida. Fla. Const., art. IV, § 1. Governor DeSantis is sued in his official capacity.

72. Defendant Florida State Board of Education is the chief implementing and coordinating body of K-12 public education in Florida. It supervises the state's public education system and the head of the Department of Education. Fla. Const., art. IX, § 2; Fla. Stat. § 20.15(1). The Board of Education has authority to implement the provisions of law conferring duties upon it for the improvement of the state system of public education, including to adopt comprehensive educational

objectives, approve plans for cooperation with other public agencies in the development of rules and enforcement of laws for which it and such agencies are responsible, enforce systemwide education goals and policies, and adopt and periodically review and revise the Sunshine State Standards, which are the core content of the curricula to be taught in the state in K-12 public schools. Fla. Stat. §§ 1001.02-.03, 1003.41. Under H.B. 1557, the Board of Education is required to review and approve or reject any recommendation of a special magistrate as to whether a school district is in compliance with the law, and to adopt rules necessary to implement the foregoing procedure. *Id.* § 1001.42(8)(c)(7)(b)(I). The Board of Education is the recipient of federal financial assistance.

73. Defendant Thomas R. Grady is the Chairman of the Board of Education, and Defendant Ben Gibson is Vice Chairman. Defendants Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, and Joe York are members. All are sued in their official capacities as members of the Board of Education.

74. Defendant Richard Corcoran is the Commissioner of Education of Florida appointed by the Board of Education to serve as the Executive Director of the Department of Education. Fla. Const., art. IX, § 1; Fla. Stat. § 20.15(2). As such, he is the chief educational officer of the state and responsible for assisting the Board of Education in enforcing compliance with the mission and goals of the education system; he also supports the Board of Education in general administration.

Fla. Stat. § 1001.10. Along with the Board of Education, the Commissioner is charged with assigning the divisions of the Department of Education with such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education. *Id.* § 20.15(5). The Commissioner is required, as needed, to develop and submit proposed revisions of the Sunshine State Standards to the Board of Education for adoption. *Id.* § 1003.41. Under H.B. 1557, the Commissioner is responsible for appointing a special magistrate to make a recommendation as to whether a school district is in compliance with the law. Corcoran is sued in his official capacity as Commissioner of Education.

75. Defendant Florida Department of Education is the administrative agency that is responsible for implementing Florida's education policies and programs, under the implementation direction of the Board of Education. Fla. Stat. §§ 20.15, 1001.20. Under H.B. 1557, the Department of Education is responsible for reviewing and updating, as necessary, school counseling frameworks and standards, educator practices and professional conduct principles, and any other student services, personnel guidelines, standards, or frameworks in accordance with the requirements of the act. The Department of Education is the recipient of federal financial assistance.

76. Defendant School Board of Manatee County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Manatee County operates Manatee School for the Arts, which Plaintiff M.A. attends. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

77. Defendant School Board of Sarasota County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Sarasota County operates Pine View School, which Plaintiff Moricz attends. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

78. Defendant School Board of Miami-Dade County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Miami-Dade County operates Miami Children's Museum Charter School, which the children of Plaintiffs Morrison and Houry attend or will attend next year; the school attended by the child of Plaintiffs Casares and Feinberg; and the school attended by the child of Plaintiff Shook. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

79. Defendant St. Johns County School Board is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The St. Johns County School Board operates the school attended by the children of Plaintiffs Dan and

Brent VanTice. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

80. Defendant Jackson County School Board is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The Jackson County School Board operates the school where Plaintiff Hatcher Powderly is employed as a teacher. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

STATEMENT OF FACTS

I. Florida’s commitment and obligation to provide a meaningful education for all students, and school districts’ efforts to meet it

81. Florida has long affirmed the importance of providing all students with an education that will prepare them to live in a free democratic society—a principle that stands in stark, unmistakable tension with the goals underlying H.B. 1557.

82. Article IX of the Florida Constitution proclaims that “[t]he education of children is a fundamental value of the people of the State of Florida,” and it is therefore “a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” Fla. Const. art. IX, § 1. As the Florida Supreme Court has recognized, “this education provision was placed in our constitution in recognition of the fact that education is absolutely essential to a free society under our governmental structure.” *Bush v. Holmes*, 919 So.2d 392, 405

(Fla. 2006) (quoting *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400, 405 (Fla. 1996) (Overton, J., concurring)).

83. The Supreme Court has affirmed the central role of public schools as “the nurseries of democracy.” *Mahanoy Area Sch. Dist. v. B. L. ex rel. Levy*, 141 S. Ct. 2038, 2046 (2021). Education “is the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

84. The “classroom is peculiarly the marketplace of ideas,” a place where our children are “trained through that robust exchange of ideas which discovers truth out of a multitude of tongues, (rather) than through any kind of authoritative selection.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (citation omitted). Schools thus have an obligation to protect even “unpopular ideas,” *Mahanoy*, 141 S. Ct. at 2046, and to ensure that students have access to a diversity of information that will prepare them “for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members,” *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality op.).

85. In keeping with this longstanding commitment to “academic freedom,” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967), the First Amendment protects students’ “right to receive information and ideas,” *Pico*, 457 U.S. at 867 (quoting

Stanley v. Georgia, 394 U.S. 557, 564 (1969)). Moreover, “students do not ‘shed their constitutional rights to freedom of speech or expression,’ even ‘at the school house gate.’” *Mahanoy*, 141 S. Ct. at 2044 (quoting *Tinker*, 393 U.S. at 506).

86. Florida guarantees that “all K-12 public school students are entitled to a uniform, safe, secure, efficient, and high quality system of education, one that allows students the opportunity to obtain a high quality education” that is “made available without discrimination on the basis of race, ethnicity, national origin, gender, disability, religion, or marital status.” Fla. Stat. § 1002.20(1), (7).

87. The Board of Education, through the Department of Education, has also adopted rules to ensure “Educational Equity.” Under Section 6B-1.0001 of the Code of Ethics, “The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizens. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.” Fla. Admin. Code r. 6A-10.081(1)(a).

88. Educators are required to “make reasonable effort to protect the student from conditions harmful to learning and/or to the student’s mental and/or physical health and/or safety”; to “not unreasonably deny a student access to diverse points of view”; to “not harass or discriminate against any student on the basis of ... sex, ... [or] sexual orientation”; and to “make reasonable effort to assure that each student

is protected from harassment or discrimination.” *Id.* r. 6A-10.081(2). In addition, “institutions have an affirmative duty” “to create an educational and work environment free of harassment on the basis of ... sex.” *Id.* r. 6A-19.008.

89. Florida’s representatives and education officials thus have recognized for many years that public schools and educators have a commitment and duty to promote the meaningful education of all students, without discrimination, and to ensure that Florida’s students are prepared to live and flourish in a free democracy.

II. Florida schools’ inclusivity efforts for the LGBTQ community

90. In recent years, local school districts have aspired to make Florida’s promise of a meaningful education real for a historically excluded and disadvantaged group: LGBTQ students.

91. For instance, Plaintiff M.A.’s school district in Manatee County has adopted an “Equity, Diversity, and Inclusion Policy” that requires “equal opportunity and access in relation to all stakeholders: students, families, and staff ... by valuing, acknowledging, recognizing, and celebrating everyone in our school system” regardless of “gender, sex, gender identity, gender expression, [or] sexual orientation.” The school board has implemented policies to, among other things, “[s]elect and develop instructional materials that are historically accurate and represent the experiences of the diverse school community,” and “interrupt and dismantle harmful or inequitable practices and policies and eliminate implicit and

explicit biases.”² Manatee County has also adopted a policy of Non-Discrimination and Access to Equal Educational Opportunity that prohibits discrimination and harassment on the basis of sexual orientation, transgender status, and gender identity, and requires educational programs “be designed to meet the varying needs of all students.” Specifically, curriculum content must be considered in light of its potential “bias based upon the protected classes” and supplemented to fairly depict the contribution of different groups “toward the development of human society.”³

92. Similarly, the Broward County School District has sought to “promote safer schools and create more welcoming and affirming learning environments” for LGBTQ students, those perceived to be LGBTQ, and their allies. As an example, Broward County requires an “inclusive curriculum” that must at least include literature written by LGBTQ authors, history including LGBTQ public figures, discussions of families including same-sex parents and relevant topics encompassing the diversity of LGBTQ young people, and recognition of national LGBTQ events.⁴

² School District of Manatee County Policy Manual, po9142 (last revised Nov. 9, 2021), <https://go.boarddocs.com/fl/mancofl/Board.nsf/Public>.

³ School District of Manatee County Policy Manual, po2260 (last revised Nov. 9, 2021), <https://go.boarddocs.com/fl/mancofl/Board.nsf/Public>.

⁴ Broward County Public Schools, “Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide” at iv, 4-5 (2012), <https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>.

Broward County has also adopted an anti-bullying policy that prohibits bullying and harassment based on sexual orientation, gender identity, and gender expression.⁵

93. The Palm Beach County School District has supported LGBTQ youth by requiring an inclusive curriculum that covers, among other things, the history and social movements of LGBTQ people, discussions of families that include same-sex parents/caregivers, and relevant topics encompassing the diversity of LGBTQ young people. It also has adopted an Anti-Bullying Roundtable and Strategic Plan, which includes safe environments for all students and staff.⁶

94. These measures have helped to create an inclusive environment for LGBTQ students that is critical to meeting their educational needs.⁷ They have also promoted the safety and acceptance of LGBTQ students, who are uniquely at risk of harassment, depression, and other negative educational experiences because of their sexual orientation or gender identity. *See infra* Part IV.

⁵ *Id.* at 5-6.

⁶ The School District of Palm Beach County LGBTQ+ Critical Support Guide (“Palm Beach Guide”) at 5-6 (2d ed. 2021), https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf.

⁷ *See, e.g.*, National Education Association of the United States of America, 2018-2019 NEA Resolutions at 3, 23 (Mar. 7-9, 2019), http://ra.nea.org/wp-content/uploads/2019/05/Resolutions_Summary_of_Winter_Committee_Meeting_Actions_2019.pdf (recommending that schools adopt “inclusive educational programs that address the unique needs and concerns” of LGBTQ students).

III. H.B. 1557 was enacted to undercut these developments, harm LGBTQ students, and stifle speech

95. H.B. 1557 seeks to undo all of this. Although it is formally entitled the “Parental Rights in Education Act,” it is popularly and more accurately known as Florida’s “Don’t Say Gay” law. H.B. 1557 is avowedly aimed at eliminating, and already has begun to eliminate, any recognition or discussion of LGBTQ persons in public schools.

Vague Statutory Text

96. In relevant part, H.B. 1557 amends Section 1001.42 to add new subsection 8(c)(3), which provides:

Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

97. The law does not define the subject matter of the speech it seeks to prohibit. Nowhere does it even attempt to define its operative terms. “Classroom instruction” is left undefined, as are “sexual orientation” and “gender identity.”⁸ Nor does the law define the actors whose speech is restricted: “school personnel” could span from teachers to principals to guidance counselors, while “third parties”

⁸ Adding to its intended vagueness, the Preamble to H.B. 1557 states that it is a bill “prohibiting classroom *discussion* about sexual orientation or gender identity.” (Emphasis added.)

ostensibly reaches anyone outside of the school personnel context, including parents and other family members (and perhaps even students).

98. The law’s prohibitions expressly apply in grades K-3. But despite the statements of many of the law’s supporters, they do not stop there. H.B. 1557 applies to any grade where “classroom instruction” is “not age-appropriate or developmentally appropriate in accordance with state standards.” As with its other core provisions, the law does not define what those “state standards” are. The law instead leaves students, educators, and others guessing about “school counseling frameworks and standards; educator practices and professional conduct principles; and any other student services personnel guidelines, standards, or frameworks,” which the Department of Education is not required to “review and update” until June 30, 2023—a year after the law goes into effect.

99. In the meantime, any parent with a “concern” about a violation of H.B. 1557 may sue their school district for court costs and attorneys’ fees, subject only to the requirement to give 30 days’ notice. Notably, H.B. 1557 places no limit on when parents can sue school districts, and legislators rejected an amendment that would allow districts to recover costs and fees if they prevail. This means that parents will be able to file suit long before the Department of Education must provide any guidance as to the meaning of certain aspects of the law, with little repercussion. Going forward, it will be “open season” on Florida school boards, who will find

themselves under the constant threat of paying legal fees and costs if they do not accede to any parent's demand to remove content, quell discussion, or ban curricula that the parent views as implicating H.B. 1557.

100. H.B. 1557's vagueness gives rise to a host of intractable interpretive questions that further invite discriminatory enforcement and broad censorship.

101. Indeed, the list of unanswerable questions is virtually endless.

102. For example, does H.B. 1557 require the removal of all library books with LGBTQ characters or families, or those with discussion of LGBTQ history? What about book fairs (attended by third parties) that have books with same-sex families or reference LGBTQ issues? Some parents have already requested catalogues of their school's library materials, no doubt intending to challenge any materials that hint at LGBTQ issues or people as prohibited under the new law.⁹

103. Another question that is likely to present itself in short order is whether H.B. 1557 bans teachers from participating in Gay-Straight Alliances. The statutory text is decidedly unclear. But, anticipating the passage of H.B. 1557, some parents have already sought information about teachers who are affiliated with GSAs.

104. Equally intractable questions will arise on a daily basis. To pose just a few of them: Does the law prohibit students from asking—or teachers from

⁹ H.B. 1557 is hardly the first instance of an effort to ban books that touch on LGBTQ persons and issues. *See, e.g.*, Matt Laviates, "From book bans to 'Don't Say Gay' bill, LGBTQ kids feel 'erased' in the classroom," NBC NEWS (Feb. 20, 2022), <https://www.nbcnews.com/nbc-out/out-news/book-bans-dont-say-gay-bill-lgbtq-kids-feel-erased-classroom-rcna15819>.

answering—questions about their families, or other families? Can students ask—and teachers answer—questions about historical events involving LGBTQ people? Would H.B. 1557 ban a teacher from discussing gay-rights’ decisions, like *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), where the Court held that LGBTQ persons cannot be discriminated against in employment? If a student writes a paper in which they discuss their gender identity or sexual orientation—and relate it to their argument—could a teacher not grade it? If the teacher did grade it, would they be prohibited from commenting on any aspect of the paper or discussing it with the student, thus leaving LGBTQ students at a systematic educational disadvantage?

105. Another deeply troubling context is school bullying. Does H.B. 1557 prohibit teachers from addressing LGBTQ issues that regularly arise in student-on-student bullying, for instance where the victim is gay or transgender and the bullying is partly the result of anti-LGBTQ prejudice?

106. Parents are also affected. What does the law require when parents come to talk to students about their jobs and one mentions their same-sex or transgender partner? Can a student’s LGBTQ parents come into the classroom at all? Can a kindergarten student draw a picture of their LGBTQ parents? If they do, can the teacher grade it? Can the teacher post it on the board with other students’ drawings, or are students with same-sex parents excluded from such classroom projects?

107. Because H.B. 1557 was deliberately written to be vague and terrifying, all in service of discriminatory purposes, none of these questions are answerable by reference to either the text of the statute or any standard interpretive principle. The law instead uses sweeping language that fails to provide notice to a reasonable person of what is prohibited, while inviting arbitrary and abusive enforcement.

Discriminatory Purpose

108. The future of public education in Florida under this regime is apparent. It is one that goes backwards in time to an era of discrimination and abandons Florida's duty—and many school districts' efforts—to provide a meaningful and inclusive education for all students. Presented with vague prohibitions under the threat of litigation, schools and educators will be chilled from discussing or even referencing LGBTQ people, and LGBTQ students will be stigmatized, ostracized, and denied the educational opportunities that their non-LGBTQ peers receive.

109. That is precisely what the Florida lawmakers who supported and passed this law intended. Indeed, in statements reminiscent of what was said in Congress about the so-called Defense of Marriage Act in 1996, legislators and Governor DeSantis have been crystal-clear about their goal of eliminating any discussion about LGBTQ identities and issues from public schools. Just as legislators' statements evidenced DOMA's aim to interfere "with the equal dignity of same-sex marriages,"

Windsor, 570 U.S. at 771-72, the statements here reflect a clear hostility and disapproval of LGBTQ students, parents, and teachers.

110. For example, the sponsor of the bill in the Senate, Senator Dennis Baxley, openly admitted that the law is intended to prohibit discussions about sexual orientation and gender identity of LGBTQ students. He warned that “everybody now is all about coming out when you’re in school” and there is a “concern” about “kids trying on different kinds of things they hear about and different kinds of identities and experimenting.” Senator Baxley added that “parents are very concerned about the departure from the core belief systems and values.” He also claimed that “75% of people ... agree with me that there’s something wrong with how we’re emphasizing this and all of a sudden overnight [students] are a celebrity when they felt like they were nobody.” These statements reveal an overt purpose of discriminating against LGBTQ people and their families, and an express desire to impose censorship in hopes of stamping out any recognition of LGBTQ identity.

111. Were there any doubt, when Senator Baxley was asked if the reason for the bill is that “there seems to be a big uptick in the number of children who are coming out as gay or experimenting and therefore we need to not discuss it in the younger grades,” he responded: “[W]e know there are social inputs into how people act and what they decide to do so, yeah, that’s part of our concern for the well-being of our children.” As another senator observed, Senator Baxley’s comments are

“what the court points to and quotes as a prima facie case, on its face, of invidious discrimination for what we have targeted and we have selected as a protected class.”¹⁰

112. In other contexts, Senator Baxley has explained that H.B. 1557 is designed to prevent discussion of LGBTQ families. At a Senate hearing on February 8, 2022, Republican Senator Travis Hutson gave the example of a math problem that includes the details that “Sally has two moms or Johnny has two dads.” Senator Baxley said that is “exactly” what the bill aims to prevent.

113. H.B. 1557’s sponsor in the House, Republican Joe Harding, has also been forthcoming about the law’s discriminatory focus on LGBTQ students and issues. Representative Harding justified the bill on the basis that talking about sexual orientation and gender identity could result in students “hav[ing] one identity in school and one at home because the school encourages that kind of behavior.”¹¹

114. Other supporting legislators have been equally candid that H.B. 1557 is intended to bar discussions of gay, lesbian, and bisexual orientations and transgender

¹⁰ Kelly Hayes, “‘Gay is not a permanent thing’: Legislature passes bill to restrict LGBTQ topics in elementary schools,” Florida Politics (Mar. 9, 2022), <https://floridapolitics.com/archives/505744-gay-is-not-a-permanent-thing-legislature-sends-controversial-parental-rights-bill-to-governor/>. Consistent with his discriminatory aim behind H.B. 1557, in 2018 Senator Baxley told his constituents: “I know some districts where there’s a big infestation of homosexuals that are pushing their agenda....”

¹¹ Kirby Wilson, “Republicans made changes to ‘don’t say gay’ bill. LGBTQ advocates aren’t buying it,” TAMPA BAY TIMES (Feb. 18, 2022), available at <https://www.tampabay.com/news/florida-politics/2022/02/17/republicans-made-changes-to-dont-say-gay-bill-lgbtq-advocates-arent-buying-it/>.

identities, *i.e.*, anything besides the heterosexual and cisgender identities that they believe are aligned with “core belief systems and values.”

115. For instance, in voicing support for the bill, Representative Juan Fernandez-Barquin claimed: “We have children as young as six years old being taught the radical leftist gender theory and that is frightening.”¹² Senator Ileana Garcia also suggested that discussions of sexual orientation should be prohibited because “‘gay’ is not a permanent thing. ‘LGBT’ is not a permanent thing.”¹³

116. The premise of H.B. 1557 is that if schools and educators ignore the realities and concerns of their LGBTQ students, those students will be discouraged or deterred from being who they are, and will instead be heterosexual, cisgender members of society, as the State of Florida would apparently prefer them to be.

117. This effort to wipe out LGBTQ identity constitutes illegal discrimination, plain and simple.

118. Governor DeSantis, in turn, has left zero question that this is the reason for H.B. 1557. As he has explained: “We’ve seen instances of students being told by different folks in school, ‘Oh, don’t worry. Don’t pick your gender yet. Do all

¹² Kelly Hayes, “‘We are in distress’: House passes LGBTQ instruction bill despite pleas from Democrats,” Florida Politics (Feb. 24, 2022), <https://floridapolitics.com/archives/500337-we-are-in-distress-house-passes-lgbtq-instruction-bill-despite-pleas-from-democrats/>.

¹³ Kelly Hayes, “‘Gay is not a permanent thing’: Legislature passes bill to restrict LGBTQ topics in elementary schools,” Florida Politics (Mar. 9, 2022), <https://floridapolitics.com/archives/505744-gay-is-not-a-permanent-thing-legislature-sends-controversial-parental-rights-bill-to-governor/>.

this other stuff.” He voiced his support for the bill because he does not approve of “injecting these concepts about choosing your gender” in schools.¹⁴

119. Governor DeSantis also made clear that the bill’s limitation on “sexual instruction” does not apply to instruction on heterosexuality and cisgender identities. Rather, he asked rhetorically, “How many parents want their kids to have transgenderism or something injected into classroom instruction?”¹⁵

120. Governor DeSantis’s press secretary, Christine Pushaw, confirmed this understanding. She called H.B. 1557 an “Anti-Grooming Bill” and said that “If you’re against the Anti-Grooming Bill, you are probably a groomer or at least you don’t denounce the grooming of 4-8 year old children.”¹⁶ Charitably read, Pushaw’s statement implied that even discussing LGBTQ issues or acknowledging LGBTQ people’s existence entices students to “become” LGBTQ; less charitably and perhaps more accurately read, it is a gross assertion that school personnel who discuss LGBTQ issues with students are akin to molesters.¹⁷

¹⁴ Li Cohen, “Florida advances ‘Don’t Say Gay’ bill that would bar LGBTQ discussions in schools,” CBS News (Feb. 18, 2022), <https://www.cbsnews.com/news/florida-dont-say-gay-bill-lgbtq-schools-senate-committee/>.

¹⁵ CBS News, “Florida Governor DeSantis defends controversial ‘Don’t Say Gay’ bill” (Mar. 5, 2022), <https://www.cbsnews.com/news/florida-governor-desantis-defends-dont-say-gay-bill/>.

¹⁶ Christina Pushaw, Twitter (Mar. 4, 2022), https://twitter.com/ChristinaPushaw/status/1499886619259777029?s=20&t=fQ_ID_5k_d5IyT1jT7bo1Q.

¹⁷ Monica Hesse, “Fans of Florida’s ‘Don’t Say Gay’ bill have a new favorite word: ‘grooming,’” WASHINGTON POST (Mar. 12, 2022), <https://www.washingtonpost.com/lifestyle/2022/03/12/florida-dont-say-gay-bill/>.

121. Pushaw's statements were echoed by other supporters of H.B. 1557, who grasped the bill's discriminatory intent. For instance, the Florida Family Policy Council, a group that lists as a core issue "LGBT Agenda & Transgenderism," has called H.B. 1557 the "Don't turn my son into a daughter bill."¹⁸

122. Were there any lingering doubt as to the punitive and discriminatory intent behind H.B. 1557, on March 10, shortly before he signed the bill into law, Governor DeSantis again stated that "[i]n the state of Florida, we are not going to allow them to inject transgenderism into kindergarten." He added, "[w]e don't want transgenderism in kindergarten and first grade classrooms."¹⁹

123. Governor DeSantis has not expressed concerns about students identifying as cisgender (or heterosexual) at any age.

124. The mentality behind these statements is clear: discussions about LGBTQ people are wrong and must be prohibited because the mere recognition of LGBTQ existence will make otherwise heterosexual and cisgender children more likely to be gay and transgender. It is also a direct statement to LGBTQ children that you are not normal and if you can't change, you should hide your identity. H.B. 1557 is not even a dog whistle; it is an open declaration of discrimination against

¹⁸ Florida Family Policy Council, "About FFPC," <https://www.flfamily.org/about-ffpc>; Florida Family Policy Council, "Legislative Session Week 7 of 9 – February 25, 2022" (Feb. 25, 2022), <https://www.flfamily.org/uncategorized/week-7-of-9-insiders-report-legislative-session>.

¹⁹ Fox News, "DeSantis slams 'woke' Disney after CEO condemns parents' rights bill" (Mar. 11, 2022), <https://video.foxnews.com/v/6300358476001#sp=show-clips>.

LGBTQ children and children with LGBTQ parents. A law whose purpose is to prevent people from being LGBTQ is not only ridiculous, unscientific, and at odds with reality; it is also offensive and unconstitutional. *See Obergefell*, 576 U.S. at 661 (“[P]sychiatrists and others [have] recognized that sexual orientation is both a normal expression of human sexuality and immutable.”).

Doubling Down on Discrimination

125. The discriminatory purpose of H.B. 1557 is further shown by the repeated refusal of lawmakers to adopt language that might mitigate the bill’s widely recognized discriminatory and chilling effects.

126. Representative Carlos Smith introduced Amendment No. 703365 to replace “sexual orientation or gender identity” with “sexual activity.” That amendment failed.

127. Senator Jeff Brandes (a Republican) similarly proposed several amendments to replace “sexual orientation or gender identity” with “human sexuality or sexual activity.” He stated: “If the intent of this bill isn’t to marginalize anyone, let’s make sure we aren’t.” But his amendments failed. Senator Baxley commented that Senator Brandes’s amendments would “significantly gut” the bill’s intent—once again confirming that his goal was to marginalize LGBTQ people.

128. Senator Lauren Book proposed Amendment No. 755282 to clarify that “‘classroom instruction’ does not include instruction or discussion relating to”

“Family structures,” “Objective historical events,” “Bullying prevention,” “Discussions between students,” and “Questions asked by students and any answer.” That amendment failed.

129. Senator Randolph Bracy and Representative Marie Paule Woodson proposed Amendments Nos. 734244 and 600607, respectively, to clarify that the law “does not apply to any discussion between a student who identifies as transgender, gender nonconforming, non-binary, or otherwise LGBTQ and their peers.” Those amendments failed.

130. Senator Tina Polsky proposed Amendment No. 290096 to clarify that “sexual orientation” “means an individual’s heterosexuality, homosexuality, or bisexuality,” and “gender identity” means “gender-related identity, appearance or behavior, regardless of whether such ... is different from that traditionally associated with an individual’s physiology or assigned sex at birth.” That amendment failed.

131. Senator Gary Farmer proposed Amendment No. 175814 to amend a different provision of the Florida Education Code that requires health education to “teach[] the benefits of monogamous heterosexual marriage,” by striking the word heterosexual. Fla. Stat. § 1003.46(2)(a). That amendment failed.

132. Representative Driskel introduced Amendment No. 194533 to require a court to “award reasonable attorney fees and court costs” to prevailing school districts. That amendment failed.

133. The fact that these amendments failed further demonstrates the law’s true purpose. H.B. 1557 is not about prohibiting “classroom instruction” on “sexual orientation” and “gender identity” that is not “age-appropriate or developmentally appropriate.” Florida law *already* requires that health education, including instruction on “human sexuality,” “[p]rovide instruction and material that is appropriate for the grade and age of the student.” Fla. Stat. § 1003.46(2)(d).²⁰

134. H.B. 1557 is intended to (and will) stifle discussion about LGBTQ people, families, and issues, in response to lawmakers’ stated concerns about LGBTQ persons and issues having any presence in schools.

135. The discriminatory purpose of H.B. 1557 is further apparent from a persistent pattern of efforts by the current Legislature and Governor to use the legislative process to ostracize and harm LGBTQ people.

136. In December 2021, Governor DeSantis’s administration took down a Department of Education web page that provided anti-bullying resources to help promote safe school environments and address high rates of suicide after a right-wing online publication, the Florida Capital Star, raised questions with the

²⁰ This same provision, as noted, requires that instruction on human sexuality “[t]each the benefits of monogamous heterosexual marriage,” Fla. Stat. § 1003.46(2)(a), and in passing H.B. 1557 lawmakers refused to strike “heterosexual” from this text.

Department about the inclusion of links to resources for LGBTQ young people.²¹ That page was restored after the LGBTQ-related references were removed.

137. Last year, Governor DeSantis line-item vetoed all LGBTQ-related funding from the budget, including money earmarked for mental health programming to support survivors of the Pulse night club massacre, to house homeless LGBTQ children, and for Orlando's LGBTQ community center.

138. For the last three legislative sessions, Representative Anthony Sabatini has introduced a bill that would criminalize parents who allow gender-affirming surgeries for transgender youth. Governor DeSantis has pledged his support for such a bill if it reaches his desk, because he is opposed to "chemical castration of minors."

139. Florida lawmakers have also passed a law that prohibits transgender girls and women from playing on girls' and women's sports teams in public schools.

140. H.B. 1557 is merely the latest in this sequence of discriminatory laws.

141. And H.B. 1557 itself reflects a longer history in which opponents of LGBTQ rights have used narratives of "depravity" and "grooming" to try to justify altering the school environment in ways meant to discriminate against LGBTQ people.²²

²¹ Brody Levesque, "Florida's DeSantis attacks LGBTQ youth by removing website resource," Los Angeles Blade (Dec. 6, 2021), <https://www.losangelesblade.com/2021/12/06/floridas-desantis-attacks-lgbtq-youth-by-removing-website-resource/>.

²² See, e.g., Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 COLUM. L. REV. 1461 (2017).

142. During a press conference on March 28, 2022, Governor DeSantis seized these narratives, stating falsely that critics of the bill “support sexualizing kids in kindergarten” and “enabling schools to, quote, transition students to a, quote, different gender without the knowledge of the parent.”²³

IV. H.B. 1557 will inevitably harm the LGBTQ community and in fact is already doing so

143. H.B. 1557’s discrimination against the LGBTQ members of Florida’s public schools is plain. In purpose and effect, it denies their existence, demeans their families, and demands their silence. It thus “generates a feeling of inferiority as to [their] status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown*, 347 U.S. at 494. By denying to LGBTQ students, teachers, and families “full citizenship stature—equal opportunity to aspire, achieve, participate in and contribute to society,” Florida violates equal protection principles. *United States v. Virginia*, 518 U.S. 515, 533 (1996). *Cf. Obergefell*, 576 U.S. at 670 (“It demeans gays and lesbians for the State to lock them out of a central institution of the Nation’s society.”).

144. H.B. 1557 is especially pernicious because it will invariably harm, and already is harming, a group that has faced heightened mental and physical risks. As

²³ Ryan Dailey, “DeSantis signs bill on how schools handle sexual orientation, gender identity,” PALM COAST OBSERVER (Mar. 28, 2022), <https://www.palmcoastobserver.com/article/desantis-signs-bill-on-how-schools-handle-sexual-orientation-gender-identity>.

President Biden recognized in condemning the law, H.B. 1557 is “designed to target and attack the kids who need support the most—LGBTQI+ students, who are already vulnerable to bullying and violence just for being themselves.”²⁴

145. The Trevor Project’s 2021 National Survey on LGBTQ Youth Mental Health found that 42% of LGBTQ youth seriously considered attempting suicide in the last year. 72% of respondents reported symptoms of generalized anxiety disorder in the last two years. 62% reported symptoms of major depressive disorder in the last two weeks. And nearly half wanted counseling from mental health professionals but did not receive it.²⁵

146. With respect to Florida schools, specifically, the Gay, Lesbian and Straight Education Network’s (“GLSEN”) 2019 National School Climate Survey found that the school climate in Florida is “not safe” for most LGBTQ secondary school students, even before enactment of H.B. 1557.²⁶ 94% of respondents heard students use “gay” in a negative way, 80% heard other homophobic remarks (*e.g.*,

²⁴ Anthony Izaguirre, “White House denounces Florida GOP over ‘Don’t Say Gay’ bill,” ASSOCIATED PRESS (Feb. 8, 2022), <https://apnews.com/article/education-florida-73ffe14f403d95e0cc09f2804d0d9ffe>. The American Academy of Child and Adolescent Psychiatry has likewise asserted that H.B. 1557 “blocks teachers and educators from talking about LGBTQ+ issues and undermines existing protections for LGBTQ+ youth and families in schools.” American Academy of Child & Adolescent Psychiatry, “Florida’s ‘Don’t Say Gay or Trans’ Law Stigmatizes LGBTQ+ Youth and Families” (Mar. 18, 2022), https://www.aacap.org/AACAP/zLatest_News/Floridas_Dont_Say_Gay_or_Trans_Law_Stigmatizes_LGBTQ_Youth_Families.aspx.

²⁵ The Trevor Project, “National Survey on LGBTQ Youth Mental Health 2021,” <https://www.thetrevorproject.org/survey-2021/?section=Introduction>.

²⁶ Gay, Lesbian and Straight Education Network, “2019 State Snapshot: School Climate for LGBTQ Students in Florida,” <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>.

“fag”) or negative remarks about gender expression, and 72% heard negative remarks about transgender people. Roughly 10% of respondents were victims of physical assault based on their sexual orientation or gender expression, and only 28% of LGBTQ students who reported incidents of verbal or physical harassment or assault said it resulted in effective staff intervention.

147. Students also described an environment of disparate treatment, where 31% were disciplined for public displays of affection that did not result in similar action for non-LGBTQ students, and 57% of transgender students were unable to use the bathroom aligned with their gender. Just 9% of students reported attending a school with a comprehensive anti-bullying and harassment policy that included specific protections based on sexual orientation and gender identity and expression, 15% were taught positive representations of LGBTQ people, history, or events, and only a mere 3% reported receiving LGBTQ-inclusive sex education at school.

148. Similarly, the Youth Risk Behavior Survey—which is conducted by the CDC and managed by the Florida Department of Education to monitor priority health-risk behaviors that contribute substantially to the leading causes of death, disability, and social problems among youth—found that for the first time since sexual orientation was added in 2013, there has been an increase in suicidal attempts for LGBTQ youth. There was no corresponding shift among heterosexual and cisgender peers.

149. Lurking beneath these statistics is a sobering fact: LGBTQ students will suffer—and some of them will likely die—if this policy is allowed go into effect.

150. Indeed, ample research in neuroscience, social science, and education have demonstrated that threats based on social identity affect the health and education of students. Put simply, making children feel unsafe causes lasting damage to their physical health, brain development, and learning. And that is precisely why school districts have responded with the kinds of affirming and accepting measures that H.B. 1557 is designed to stamp out.

151. LGBTQ students who are taught an inclusive curriculum are less likely to hear homophobic remarks or remarks about gender expressions. They perform better academically and are more likely to pursue post-secondary education. They are also significantly more likely to have classmates who are somewhat or very accepting of LGBTQ people.²⁷ LGBTQ youth who have a trusted adult at school have higher levels of self-esteem.²⁸ And affirming transgender and non-binary youth by respecting their pronouns is associated with lower rates of attempting suicide.²⁹

²⁷ Kosciw, J. G., Clark, C.M., Truong, N. L. & Zongrone, A. D., Gay, Lesbian, and Straight Education Network, The 2019 National School Climate Survey (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

²⁸ Dessel, A.B., Kulick, A., Wernick, L.J., & Sullivan, D., “*The importance of teacher support: Differential impacts by gender and sexuality*,” 56 Journal of Adolescence 136-144 (2017), <https://www.sciencedirect.com/science/article/abs/pii/S0140197117300192>.

²⁹ The Trevor Project, “National Survey on LGBTQ Youth Mental Health 2021,” <https://www.thetrevorproject.org/survey-2021/?section=Introduction>.

152. In short, LGBTQ students with inclusive educational environments receive a more equal and fair education; they are less likely to suffer discrimination, stigma, and harm; and they are more likely to report positive health outcomes.

153. H.B. 1557 thus will not just stigmatize and mark as “lesser” LGBTQ students—a serious injury in itself. It also will create and exacerbate environments where LGBTQ students are more likely to do poorly in school, experience bullying and harassment, and suffer higher risks to their mental and physical health. Indeed, a GLSEN survey found that in states with laws widely known as “No Promo Homo” laws, like H.B. 1557, students were more likely to hear homophobic remarks from school personnel, staff were far less effective in handling reported incidents of harassment or assault, and schools were less likely to have LGBTQ-related resources (such as comprehensive harassment policies, supportive school personnel, and Gay-Straight Alliances).³⁰

154. By banning discussions about LGBTQ students and issues and erasing LGBTQ students from their schools, H.B. 1557 will cause serious, irreparable, and immediate harm to students. Beyond that, H.B. 1557 discriminates against LGBTQ parents, teachers, and other school personnel by denying their existence and ability to speak and participate freely in schools. And it injures non-LGTBQ persons who

³⁰ Gay, Lesbian, and Straight Education Network, The 2009 National School Climate Survey, <https://www.glsen.org/sites/default/files/2020-11/2009%20National%20School%20Climate%20Survey%20Full%20Report.pdf>.

desire (for themselves or their children) an environment that is free of discrimination and provides for an open education.

155. The experiences of the student, parent, teacher, and organizational Plaintiffs in this case reflect that these harms are already occurring and will continue to occur absent judicial relief.

A. Harm to Students

156. The student Plaintiffs have already witnessed first-hand the impact of H.B. 1557 on their LGBTQ peers. Passage of this law has led to an environment where recognition of and discussion about LGBTQ persons and issues is chilled or silenced completely; LGBTQ students are relegated to second-class status; and LGBTQ students are unable to obtain as good an education as other students.

157. For instance, M.A. has been actively trying to increase teacher education and support at his school for those teachers who either are not inclined or do not know how to be supportive of LGBTQ students. About a month ago, he drafted and submitted a proposal to establish a “Committee on Classroom Practices” related to LGBTQ students. The committee would consist of students and teachers and be charged with creating guidelines for teachers on how to respond to common problems for LGBTQ students.

158. M.A. recognizes that there is little chance that this proposal will be considered, let alone implemented, as a result of the new law. M.A.’s GSA teacher-

advisor has already warned that she could potentially lose her job for adjusting pronouns to respect a student's gender identity. M.A.'s teacher-advisor is hardly alone in this regard: already, some counties have updated their gender-diverse guidelines to require teachers to require parental consent before honoring a student's request to use different pronouns than those aligned with their gender assigned at birth.³¹

159. M.A. knows that as his teachers face consequences, they will be afraid to do anything that could potentially violate the law, including acknowledging and helping LGBTQ students. Indeed, M.A. now fears that the very existence of the GSA that he fought for two long years to establish is at risk.

160. Similarly, Moricz's teachers have said they will need to remove their images of support, including pride flags and rainbows in the classroom. These insignia have always indicated to Moricz that he was in a safe and welcoming space.

161. Moricz's teachers have also discussed the need to alter and change their curriculums. For instance, last year during a discussion on the role of chromosomes in gender identity, Moricz's Biology teacher explained the difference between sex and gender. These discussions were meaningful to Moricz's development and education. Likewise, in his Government class this year, Moricz has discussed H.B.

³¹ See, e.g., Liz Crawford, "Sarasota County Schools updates gender diverse guidelines for Florida's new parental rights law," 10 Tampa Bay WTSP (Mar. 29, 2022), <https://www.wtsp.com/article/news/local/sarasotacounty/sarasota-county-schools-gender-diverse-guidelines-florida-parental-rights-law/67-aaa93bd7-bd0d-476c-88e9-33920b33d32f>.

1557 and the risks already facing LGBTQ youth, as well as issues like LGBTQ representation in government. Moricz fears that as a result of H.B. 1557, these discussions and lessons will no longer be permitted, and his education will suffer.

162. M.A. shares these worries. In his creative writing class, he often writes about issues related to his sexual identity and sexual orientation more generally. For instance, he wrote about H.B. 1557 and how it would impact his life. Now it is unclear whether he would be able to write such an essay. M.A. is also working on a project in which he was instructed to write a “rant” about an issue that he cares about. He is writing a response to those who say that gay marriage should be illegal, including by doing significant legal research into the history of gay marriage. Here, too, he worries that his education will be stymied by H.B. 1557. Similarly, in his Biology class, M.A.’s peers recently asked what it meant to be transgender. His teacher explained in an accepting way that she was happy and comfortable in her body but some people are not, and everyone should be. M.A. believes that this conversation would no longer be possible.

163. For these reasons, on March 4, 2022, M.A. sent a letter to his state senator explaining why the senator should not vote for the bill. He explained:

History is consistent with common sense: it demonstrates that students must feel safe and affirmed, while laws and statutes must not unreasonably abridge their individual rights at school. Lawmakers are tasked with making sure legal statutes are in place to protect student rights. But when lawmakers remove those rights, like forcing

developing children to not communicate their own experiences with their peers, they neglect to fulfill their duties. It's a further disservice when teachers, including school counselors who have a confidentiality obligation, have to tell the students' parents what they don't want out in public.

164. Doe is just 11 years old, yet she too has already felt the impact of the new law. When McClelland explained the new law to Doe at a high level, Doe asked McClelland if she is going to be okay. McClelland did not know how to respond.

165. McClelland and her family are deeply concerned that H.B. 1557 will operate to stigmatize Doe in school, leading to bullying and ostracization. McClelland is also worried that she will no longer be able to have conversations at the start of each school year with teachers and school officials to try to mitigate the risk to her child, and to make sure she can feel safe and worthy and learn like every other student.

166. The VanTices also worry about their sons' safety and well-being—both physically and emotionally. They fear that the bill will empower and embolden anyone—students, other parents, and even school officials—who might want to bully or ostracize their children because of their parents' sexual orientation.

167. As a heterosexual parent, Shook fears the impact H.B. 1557 will have on her daughter's education. She wants her daughter to be taught that all families are valid and that she can grow up to be herself and be accepted in school, no matter her sexual orientation or gender identity. H.B. 1557 will prevent that from occurring.

168. Indeed, just a few weeks ago, Shook's daughter hoped to bring to school a picture of herself marching in the Miami Pride parade. She thought this would be a good contribution to a lesson about women's history month. But Shook's daughter's teacher suggested that would not be a good idea in light of H.B. 1557, so she brought in another picture instead. Shook is already feeling the chilling effect that H.B. 1557 has on her daughter's classroom environment.

169. In light of H.B. 1557, Equality Florida's members have reported an uptick in the number of LGBTQ students experiencing harmful language or physical attacks from other members of the school community. In most incidents, students report that the school does little, if anything, to respond. Moreover, Equality Florida has learned that a transgender student at one school has been told by their principal that they are not allowed to talk about being transgender with other students.

B. Harm to Parents and Families

170. H.B. 1557 is also harming LGBTQ parents, who are being excluded from their children's education and stigmatized in front of their children. Many of these parents fear that the lessons they have taught their children about acceptance and inclusion will be undermined by a school environment of discrimination.

171. For instance, when Dan VanTice was preparing to testify in front of the Florida State Senate regarding the impact of H.B. 1557 on his family, his son came up to him and asked if he was going to be able to talk about his family with his

friends at school. Dan had to honestly answer that he wasn't sure, but that was why he was testifying against the bill.

172. Days later, on Valentine's Day 2022, while Brent VanTice was driving their sons to school, the boys were discussing their excitement to pass out homemade Valentines to their friends. Brent jokingly asked one of his sons if he was going to say that his favorite Valentine was his Daddy. His son responded that he couldn't talk about his Daddy at school anymore because of the bill.

173. The VanTices know that H.B. 1557 will impact their sons' abilities to fully participate in their school curriculum. For example, every year the boys are asked to bring in a picture of their family and to talk about their family with their teacher and peers. This is part of the way that their children, like many young children, build community at school—by talking and sharing stories about their family. Similarly, their sons have been asked to bring in their favorite book and, on multiple occasions, they have brought in *Daddy, Papa, and Me*, a story about a toddler who happens to have gay parents. As a result of H.B. 1557, the VanTices believe that their sons' participation in assignments like these will be limited, since their teacher will not be able to engage with their family experience. Children with heterosexual parents will continue to express themselves, bond with their peers, and build community through their families, but the VanTices' sons will be left out.

174. The VanTices also fear that the bill will prevent them from being able to authentically present themselves when engaging in school activities, such as visiting or presenting to their children's class or attending school-wide events or PTO meetings, and that it will empower and embolden others to discriminate against them.

175. Casares and Feinberg worry about how the bill will impact their child's interactions with their classmates and their own ability to participate in the school's curriculum. For example, at the beginning of each school year since starting public school, their child has been asked to introduce their family to the class, whether through a picture or a family tree. This year, their child was instructed to do a project in which they were to write down two things they wanted their teacher to know about them and two things they wanted their peers to know about them. Immediately, their child decided that they wanted to share with the teacher the fact that they have two moms. Casares and Feinberg fear that, as a result of H.B. 1557, their child will be made to feel excluded if their teacher has no ability to engage on the child's home and personal life. They also fear that this will impede their child's ability to form meaningful and important relationships at school.

176. Similarly, Casares and Feinberg fear that they will not be able to fully interact with their child's teacher and school community, as they believe that teachers, staff, and administrators will be fearful and unable to fully communicate

with them on the same terms as opposite-sex parents. This will not only impact their involvement as classroom parents, but also Feinberg's role in the PTA. They believe that this will limit the effectiveness of their relationships with school staff and administrators, as well as the parent community, and will broadly undermine their ability to be included in regular class and school-wide activities.

177. Morrison and Houry also fear the impact H.B. 1557 will have on their children. Right now, their children are comfortable and accepted at school, but Morrison and Houry are aware that things are likely to change. They fear that their children's openness will not be embraced by their teachers or peers, and that their children will be stigmatized at school and otherwise. They also fear that their children will be made to feel that the differences in families are negative rather than positive, and that their children's voices could be silenced. They are concerned that because of the bill, the curriculum for their children will have to be changed, and children will no longer receive education on the normalcy and value of differences, whether it be about families or any other aspects of life.

178. Moreover, Morrison and Houry fear that their role in the school community could be curtailed by H.B. 1557. They have always been open about their sexuality and their acceptance of others, but they worry that their lived value of acceptance will be seen as divisive and risky rather than uniting. They fear that

others will not know what they can and cannot talk about and that, as a result, any attempts to be honest about who they are will be avoided or potentially silenced.

C. Harm to Teachers and Other School Personnel

179. Many Plaintiffs have recognized the harm that H.B. 1557 is already inflicting on teachers and on teachers' ability to provide a welcoming and inclusive environment that is safe for LGBTQ students.

180. Hatcher Powderly, a middle-school teacher, is deeply concerned about the impact that H.B. 1557 will have on her ability to teach her students and express ideas in the classroom, and she fears that the law will have a striking impact on what she is permitted to teach and discuss. For example, Hatcher Powderly often assigns independent reading to her students and lets them choose their own genre or authors. If she has a student who plans to read a book by an LGBTQ author or related to LGBTQ subject matter, she fears that she will be vulnerable to a lawsuit or school discipline. Similarly, Hatcher Powderly often gives her students the opportunity to write about individual experiences, and she fears that the bill might limit her ability to respond or engage with any student who writes about anything related to the LGTBQ community.

181. Given the vagueness of H.B. 1577's proscriptions, which can be enforced through a suit by any parent, Hatcher Powderly fears that almost anything she says could be turned against her. She does not know how she will be able to

teach without constant fear of losing her job, which would have irreparable consequences for her.

182. Hatcher Powderly is also deeply concerned about the impact the bill will have on her students. For example, two of the students at her school this year in sixth grade came out to their peers and chose to use different names in school than at home. Because of H.B. 1557, students may fear to be their true selves—and she may be prohibited from supporting them without risking her job (even if her goal is to prevent bullying, protect their welfare, and answer appropriate questions).

183. As a middle-school teacher, Hatcher Powderly is deeply aware of the impact that these developments will have on students' mental health, as well as the ability of the other students to learn about tolerance and how to become effective members of a diverse society. Hatcher Powderly fears that H.B. 1557 will limit her effectiveness in the classroom to the detriment of her students' education.

184. Equality Florida's membership includes teachers in Florida public schools, including Hatcher Powderly. Some of these teachers have LGBTQ students they would like to support, including through service as faculty advisors for GSAs or other student clubs—and also through the protection of LGBTQ students from bullying and harassment (which requires discussing LGBTQ identities and issues with students). But these teachers feel they must refrain from doing so because they are concerned about violating H.B. 1557 and being disciplined or fired. Some

teachers have reported that they avoid engaging LGBTQ students all together because they fear what might happen as a result. Those that do engage have already faced consequences; for instance, one teacher who affirmed an LGBTQ student by informing the class that bullying about sexual orientation or gender identity is unacceptable is being harassed online by parents.

185. Equality Florida's membership also includes LGBTQ teachers who are afraid to identify themselves as LGBTQ or discuss LGBTQ issues because they are concerned about violating H.B. 1557. Some LGBTQ teachers reasonably fear that acknowledging the existence of a same-sex or transgender partner or spouse to students would be considered a violation of H.B. 1557 and could result in discipline.

186. Finally, Equality Florida's membership includes school counselors in Florida public schools. Counselors have reported that they are afraid to talk with LGBTQ youth because they are concerned that they will lose their licensure or will be sued in a personal capacity simply for trying to hear from an LGBTQ student what their needs are. This fear has created an immense barrier in counselors' ability to do their jobs and provide students with access to necessary mental health services.

D. Harm to Organizational Plaintiffs

187. Equality Florida and Florida Equality's members are experiencing harm as a result of H.B. 1557, as set forth above.

188. The organizations themselves are also suffering injury to their mission and by virtue of the need to divert resources to combat an unjust law.

189. Equality Florida has been on the frontlines in fighting against the passage of H.B. 1557 to protect its LGBTQ members. In doing so, the organization has already diverted significant resources and time. For example, Equality Florida has run ads in the state against H.B. 1557, costing the organization \$90,000. It has also organized a phone bank program, a massive ad buy for cable television spots and on social media, and numerous lobby days at the state legislature to fight against passage of the bill.

190. Already, Equality Florida has noticed many respects in which its efforts have been impacted by H.B. 1557: there is now a “paralysis” among school district leadership, which has become hesitant to engage in Equality Florida programming.

191. Indeed, multiple school employees who had previously agreed to speak on panels for Equality Florida have had to cancel after school leadership made it clear that they would not participate in a conference organized by Equality Florida. School members have expressed fears as to whether GSAs will be able to remain in existence, and some schools have prevented GSAs from forming in the first place.

192. Equality Florida’s educational mission is also directly implicated by H.B. 1557. Equality Florida organized a Safe and Healthy School Project, which aims to create a culture of inclusion while countering the bullying, harassment, social

isolation, and bigotry that are risk factors for LGBTQ students. This project offers free resources to educators, students, parents, and supporters. It is the only statewide LGBTQ initiative focused on providing support and guidance to school districts.

193. As part of its Safe and Healthy School Project, Equality Florida has compiled materials for educators in Florida outlining policies and steps schools can take to ensure LGBTQ students are adequately supported. It also hosted the “All Together Now” conference, which one District Superintendent described as “about recognizing that we must move beyond the culture of indifference when it comes to securing LGBTQ safe learning environments. Policies and lip service get you nowhere without action.”

194. Equality Florida has learned that, already, in anticipation of the law being enacted and going into effect, half of the school districts with LGBTQ support guides removed their guidance or stopped the development of guidance.

195. Thus, the enactment of H.B. 1557 significantly changes what, if anything, Equality Florida can do in schools across the state.

196. Family Equality’s mission is also directly impacted by H.B. 1557, as the law materially changes what, if anything, Family Equality can provide to Florida schools to fight discrimination of LGBTQ families and youth. For example, Family Equality has a “Book Nook,” which provides a comprehensive list of the best

LGBTQ books for children of all ages, including pre-K through third grade.³² Family Equality fears that many of these books would not be permitted if H.B. 1557 is enacted.

197. Additionally, Family Equality has diverted and will have to divert many resources to address the impact of the bill. Already, Family Equality has diverted resources away from other campaigns nationwide to focus on fighting the impact of H.B. 1557. Family Equality has disseminated multiple “Action Alerts” to inform individuals on their mailing list about the impact of the bill and leadership has spent time and resources promoting the potential impact of the bill via op-eds, lobbying, and social media. Once the bill is in effect, Family Equality will have to develop specific resources for Florida families as to how the bill might impact them and what they can do to try to ensure that their families are as safe and supported as possible.

CAUSES OF ACTION

COUNT I

Due Process Clause of the Fourteenth Amendment to the United States Constitution: Vagueness (Brought pursuant to 42 U.S.C. § 1983 by all Plaintiffs against all Defendants)

198. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

³² Family Equality, LGBTQ+ Books for Parents and Children, <https://www.familyequality.org/family-support/lgbtq-books/>.

199. A law is “void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). These requirements have particular weight when the law threatens to impinge on First Amendment rights.

200. H.B. 1557 is void for vagueness and thereby violates Plaintiff’s Fourteenth Amendment rights facially and as applied by Defendants.

201. As to Plaintiffs M.A., Moricz, and Doe, and Equality Florida, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what students can and cannot say and do while participating in “classroom instruction” (a term that is itself vague), and because it invites arbitrary and discriminatory enforcement.

202. Similarly, as to Plaintiffs McClelland, Dan and Brent VanTice, Casares and Feinberg, Morrison and Houry, Shook, and Equality Florida, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what parents can and cannot say and do in the course of “classroom instruction” (a term that is itself vague), and because it invites arbitrary and discriminatory enforcement.

203. As to Plaintiff Hatcher Powderly and Equality Florida, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what teachers can and cannot say and do during “classroom

instruction” (a term that is itself vague), and because it invites arbitrary and discriminatory enforcement.

204. As to Plaintiffs Equality Florida and Family Equality, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what the law permits and prohibits, and because it invites arbitrary and discriminatory enforcement.

205. H.B. 1557 prohibits “[c]lassroom instruction” by “third parties” on “sexual orientation” and “gender identity” in K-3, and otherwise in any context where it is not “age-appropriate” and “developmentally appropriate” in accordance with unspecified “state standards” that may go into effect long after the law does. These key terms are all ambiguous and undefined. The vagueness of these terms has a chilling effect on the behavior and speech of students, including Plaintiffs M.A., Moricz, Doe, and Equality Florida because they are unable to determine what the law does and does not prohibit; they are uncertain about what they are legally able to say and do in class; and they hesitate to speak or participate in class out of fear of violating the law and facing discipline from their school.

206. The law also has a chilling effect on the behavior and speech of parents, including Plaintiff McClelland, Dan and Brent VanTice, Casares and Feinberg, Morrison and Houry, Shook, and Equality Florida because they are likewise unable

to determine what the law does and does not prohibit, and they are uncertain about what they are legally able to say and do in the classroom or school.

207. The vagueness and ambiguity of the law also have a chilling effect on the behavior and speech of LGBTQ teachers, including Plaintiff Hatcher Powderly and Equality Florida, because they are likewise unable to determine what the law does and does not prohibit, and they are uncertain about what they are legally able to say and do while teaching in school, for fear of violating the law.

208. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered and will continue to suffer irreparable injury, including violations of their rights under the Fourteenth Amendment to due process.

209. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered damages to be determined according to proof at trial.

COUNT II

**Equal Protection Clause of the Fourteenth Amendment
to the United States Constitution: Discrimination
(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, Doe, Dan
and Brent VanTice, Casares, Feinberg, Morrison, Houry, Equality Florida,
and Family Equality against all Defendants)**

210. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

211. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides: “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

212. Defendants have deprived Plaintiffs of the rights, privileges, or immunities secured by the Equal Protection Clause because Defendants, without sufficient justification, have treated Plaintiffs differently from other similarly situated persons based on their sex, sexual orientation, gender, gender identity, and transgender status.

213. H.B. 1557 was enacted with an invidiously discriminatory purpose and results in discriminatory and disparate effects, and thus violates the Fourteenth Amendment rights of Plaintiffs facially and as applied by Defendants.

214. Comments by the legislative sponsors of the Act, other legislators, and Governor DeSantis all confirm that H.B. 1557 was enacted, at least in part, with the unlawful purpose to discriminate against LGBTQ people. The public record reflects a purpose to target, demean, belittle, and harass LGBTQ individuals and families, with the intent and effect of depriving them of full advantage of the academic and extracurricular opportunities provided by the school environment. It also reflects an effort to impose state-selected (but demonstrably outmoded and offensive) gender stereotypes as the dominant ideology and controlling rule of public education in Florida—a form of improper sex stereotyping prohibited by the Constitution.

215. In addition, H.B. 1557 is simply the latest in a long line of anti-LGBTQ laws that the Florida legislature and Governor have passed or attempted to pass in recent memory, further illustrating and confirming its invidiously discriminatory purpose. H.B. 1557 also follows in the footsteps of decades of “No Promo Homo” and “Don’t Say Gay” laws and has the same aim, which it achieves by imposing vague and broad proscriptions that invite—and indeed are already causing—discriminatory enforcement only against discussions of LGBTQ persons and issues.

216. Although the law has not yet taken effect, Plaintiffs have nonetheless already suffered a stigmatic injury and ostracization from passage of the law, and from the imprimatur of discrimination by Defendants. These injuries have been accompanied by changes that are substantially likely to encompass further material, educational, and other injuries to Plaintiffs in their school and personal lives.

217. For example, H.B. 1557 has already stigmatized and singled out LGBTQ students such as Plaintiffs M.A., Moricz, Doe, and Equality Florida as inferior and unequal in public school settings; encouraged teachers and other students to view LGBTQ students as different and inferior and effectively condoned bullying and harassment by others; interfered with the healthy development and socialization of LGBTQ students; and harmed their health and well-being.

218. H.B. 1557 disparately harms LGBTQ students such as Plaintiffs M.A., Moricz, Doe, and members of Equality Florida and denies such students equal educational opportunities based on their LGBTQ orientation or identity.

219. H.B. 1557 also disparately harms LGBTQ teachers, such as members of Equality Florida, and LGBTQ parents including Plaintiffs Dan and Brent VanTice, Casares, and Feinberg based on their LGBTQ orientation or identity.

220. In addition, as to Plaintiffs Dan and Brent VanTice, Casares and Feinberg, Morrison and Houry, and LGBTQ parent members of Equality Florida, H.B. 1557 violates the equal protection right to marry on the “same terms and conditions as opposite-sex couples.” *Obergefell*, 576 U.S. at 676; *see also id.* at 667 (“A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education.”); *Pavan v. Smith*, 137 S. Ct. 2075, 2078 (2017). The purpose and effect of H.B. 1557 is that LGBTQ married couples will be treated differently and worse than non-LGBTQ married couples in important aspects of their interactions with Florida’s public schools, and that the children of LGBTQ married couples will similarly suffer discrimination and disadvantage in Florida’s public schools as compared to all other children.

221. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs M.A., Moricz, Doe, Dan and Brent VanTice, Casares, Feinberg, Morrison,

Houry, Equality Florida, and Family Equality have already suffered and will continue to suffer irreparable injury, including violations of their Fourteenth Amendment rights to equal protection of the laws.

222. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, Doe, Dan and Brent VanTice, Casares, Feinberg, Morrison, Houry, Equality Florida, and Family Equality have suffered damages to be determined according to proof at trial.

COUNT III

**First Amendment to the United States Constitution:
Right to Receive Information
(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, Doe, and
Equality Florida against all Defendants)**

223. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

224. The First Amendment to the United States Constitution provides: "Congress shall make no law ... abridging the freedom of speech." U.S. Const., amend. I. The First Amendment applies to the State of Florida pursuant to the incorporation doctrine of the Fourteenth Amendment.

225. The First Amendment protects "the right to receive information and ideas." *Pico*, 457 U.S. at 867. Laws regarding school curricula and instruction violate students' First Amendment rights to receive information and ideas where they are not "reasonably related to legitimate pedagogical concerns," *Hazelwood*

Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988), or where officials exercise their discretion over curricular decisions “in a narrowly partisan or political manner,” *Pico*, 457 U.S. at 870.

226. H.B. 1557 violates the First Amendment right to receive information and ideas of Plaintiffs M.A., Moricz, Doe, and Equality Florida facially and as applied by Defendants. More specifically, the law violates their right to receive and debate information and ideas concerning sexual orientation and gender identity, even when such information serves essential pedagogical purposes.

227. H.B. 1557’s restrictions on students’ rights to receive information and ideas concerning sexual orientation and gender identity are unrelated to legitimate pedagogical concerns, and serve no other legitimate state purpose. Instead, H.B. 1557 is rooted in animus against LGBTQ individuals, as demonstrated by the public record. H.B. 1557 is also the result of partisan or political decision-making.

228. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs M.A., Moricz, Doe, and Equality Florida have suffered and will continue to suffer irreparable injury, including violations of their First Amendment rights to receive information and ideas.

229. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs M.A., Moricz, Doe, and Equality Florida have suffered damages to be determined according to proof at trial.

COUNT IV

**First Amendment to the United States Constitution:
Right to Freedom of Expression
(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, Doe, and
Equality Florida against all Defendants)**

230. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

231. “[S]tudents do not ‘shed their constitutional rights of freedom to speech or expression,’ even ‘at the school house gate.’” *Mahanoy*, 141 S. Ct. at 2044 (quoting *Tinker*, 393 U.S. at 506). Thus, student speech is presumptively protected unless it “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” *Id.* at 2045 (quoting *Tinker*, 393 U.S. at 513).

232. Likewise, laws regulating students’ speech violate their First Amendment rights where such laws are not “reasonably related to legitimate pedagogical concerns.” *Kuhlmeier*, 484 U.S. at 273.

233. H.B. 1557 violates the First Amendment right to freedom of expression of students, including Plaintiffs M.A., Moricz, Doe, and Equality Florida, facially and as applied by Defendants. More specifically, the law restricts Plaintiffs’ ability to discuss topics related to sexual orientation and gender identity in class and related settings, and even restricts their ability to self-identify.

234. H.B. 1557’s restrictions on students’ rights to free expression concerning sexual orientation and gender identity are not justified by preventing

disruption to the school environment, are unrelated to legitimate pedagogical concerns, and serve no other legitimate state purposes. Instead, the law is rooted in animus against LGBTQ individuals, as demonstrated by the public record.

235. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, Doe, and Equality Florida have suffered and will continue to suffer irreparable injury, including violations of their First Amendment right to freedom of expression.

236. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, Doe, and Equality Florida have suffered damages to be determined according to proof at trial.

COUNT V

First Amendment to the United States Constitution: Overbreadth

**(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, Doe, and
Equality Florida against all Defendants)**

237. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

238. A "law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008)).

239. H.B. 1557 is overbroad in violation of the First Amendment rights of Plaintiffs M.A., Moricz, Doe, and Equality Florida, facially and as applied by Defendants, because even to the extent that the law could be interpreted as having any legitimate pedagogical purpose, “a substantial number of its applications are unconstitutional.” *Id.* More specifically, even if H.B. 1557 has some legitimate pedagogical purpose, it is not narrowly tailored to that purpose but rather will be applied in a manner that broadly infringes Plaintiff M.A., Moricz, Doe, and Equality Florida’s First Amendment rights to receive information and ideas, and their right to freedom of expression.

240. This overbreadth has a chilling effect on the behavior and speech of students, including Plaintiffs M.A., Moricz, Doe, and Equality Florida, resulting in the self-censoring and intentional avoidance of a broad, sweeping category of protected speech. For example, due to the overbreadth of H.B. 1557, students like Plaintiffs M.A., Moricz, Doe, and Equality Florida are discouraged from identifying themselves as LGBTQ in school or from coming out as LGBTQ; from sharing experiences or views about LGBTQ issues, sexual orientation, or gender identity in school, as Plaintiffs M.A., Moricz, Doe, and Equality Florida currently do; and from asking questions about LGBTQ issues, sexual orientation, or gender identity in school, as Plaintiffs M.A., Moricz, Doe, and Equality Florida currently do, all of which infringes on their First Amendment rights.

241. This overbreadth also has a chilling effect on the behavior and speech of teachers, including Plaintiffs Hatcher Powderly and Equality Florida, resulting in the self-censoring and intentional avoidance of a broad, sweeping category of protected speech. For example, teachers are discouraged from providing students with accurate information about sexual orientation and gender identity for fear of violating the law, which infringes on the First Amendment right to receive information of Plaintiffs M.A., Moricz, Doe, and Equality Florida.

242. H.B. 1557's overbroad restrictions are not justified by preventing disruption to the school environment, are unrelated to legitimate pedagogical concerns, and serve no other legitimate state purposes. Instead, the law is rooted in animus against LGBTQ individuals, as demonstrated by the public record, as well as by partisan or political reasons.

243. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, Doe, and Equality Florida have suffered and will continue to suffer irreparable injury, including violations of their First Amendment rights.

244. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, Doe, and Equality Florida have suffered damages to be determined according to proof at trial.

COUNT VI

**Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688:
Discrimination Based on Sex
(Brought by Plaintiffs M.A., Moricz, Doe, and Equality Florida against
Defendants State Board of Education and Florida Department of Education)
Discrimination Based on Sex**

245. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

246. Defendants State Board of Education and Florida Department of Education are recipients of federal financial assistance.

247. The acts and omissions of Defendants have violated Plaintiffs' M.A., Moricz, Doe, and Equality Florida's rights under Title IX by discriminating against them on the basis of sex, which includes sexual orientation and gender identity.

248. More specifically, H.B. 1557 results in the disparate treatment of students in Florida's public education system on the basis of sex, because they are excluded from the participation in, denied the benefits of, and/or discriminated in education. By implementing and enforcing H.B. 1557, Defendants State Board of Education and Florida Department of Education are intentionally and/or with deliberate indifference engaging in such discrimination.

249. As a direct and proximate result of Defendants State Board of Education and Florida Department of Education's unlawful conduct, Plaintiffs M.A.,

Moricz, Doe, and Equality Florida have suffered and will continue to suffer irreparable injury, including violations of their First Amendment rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, and request an award of the following relief:

250. A declaratory judgment that H.B. 1557 and the actions described herein deprive Plaintiffs of their rights under the United States Constitution, including the First and Fourteenth Amendments thereto, and applicable federal statutory law, including 42 U.S.C. § 1983;

251. Preliminary and permanent injunctive relief enjoining Defendants from implementing and enforcing H.B. 1557 in violation of the rights guaranteed to Plaintiffs by the United States Constitution and applicable federal statutory law;

252. Nominal, compensatory, statutory, and punitive damages in an amount to be determined at trial, as well as prejudgment interest, where appropriate;

253. An award of Plaintiffs' costs of suit and reasonable attorneys' fees, expenses, and costs under 42 U.S.C. § 1988 and other applicable laws; and

254. Such other relief as the Court deems necessary, just, and proper.

Dated: New York, New York
March 31, 2022

Respectfully submitted,



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**pro hac vice forthcoming*

In The

**United States District Court
Northern District of Florida**

EQUALITY FLORIDA, ET AL,

)

Number: 4:22-cv-00134-AW-MJF

PLAINTIFFS,

)

v.

)

RONALD DESANTIS, ET AL,

)

DEFENDANTS.

)

MOTION TO INTERVENE

NOW COMES, Scott Huminski (“Huminski”), and moves to intervene pursuant to F.R.C.P. 24 as follows:

1. A central gravamen of the Complaint is that Ronald DeSantis, Et al. (Defendants) engage in a systemic procedure, policy, custom or practice of silencing First Amendment speech via the use of notorious discriminatory tactics targeting speech of those of a specific group such as the LGBTQ citizenry/community of Florida or those of a particular viewpoint. Certainly, the Plaintiffs are free to speak on any issue except a topic related to LGBTQ status and issues. In the case at Bar, one of those viewpoints is that residents of Florida have the right to freedom of speech absent the fear of governmental retaliation or viewpoint discrimination based upon a criteria such as the content of speech, race, color, creed or, more succinctly, speech with content that discusses topics that the government is uncomfortable with such as sexual orientation or gender identity. Ronald Desantis could have not signed the “don’t say gay” bill and referred it back to the legislature for narrow-tailoring, but, failed to consider basic First Amendment and Due Process/Equal Protection mandates and signed the highly discriminatory, unconstitutionally vague and over-broad bill creating Florida law. Cleverly, the bill was crafted to appear as if it was only a prohibition in the grades kindergarten to grade three, but, the vague language of the bill extends to the entire school population regardless of age or grade.
2. Huminski, a 10 year resident of Florida, is a long-time critic of the “plodding steer of the State” whether it be in Huminski v. Corsones, 396 F3d 53, 90 (2nd Cir 2005), or as the leader and founder of Scott X and the Constitution Commandos, an anti-Police-State rock

KDW

band, with half a million views of their youtube music videos. See Exhibit "A", WHEN COURTS SUBVERT LAW TO BANISH A CRITIC, CHARLES LEVENDOSKY c. 2000 Casper (Wyo.) Star-Tribune (discussing Huminski's First Amendment issues).

3. In retaliation for Huminski's anti-Police-State First Amendment core protected political expression, Ronald DeSantis, Et al. engaged in the following retaliatory conduct:

- Huminski was criminally prosecuted in State v. Huminski, 17-MM-815, Lee County Court **absent** a State of Florida charging document authored by the State or signed by a legitimate State of Florida prosecutor with the only document that could be deemed as a commencement/charging document being a show cause order copied from another Florida Court (the 20th Circuit Court), a true and correct copy of the order attached to an associated Court Paper are attached hereto as Exhibit "B".
- A state prosecutor did show up at hearings in State v. Huminski and, of course, successfully pursued the case to criminal conviction absent the filing of a charging document and without bothering to serve Huminski with a commencement document.
- At conviction the State of Florida insisted upon an order barring Huminski from any contact with the State of Florida for life. A true and correct copy of a court filing of Huminski detailing the lifetime First Amendment censoring of Huminski and other case details in State v. Huminski is attached hereto as Exhibit "C". Included in Exhibit "C" are papers forbidding Huminski from reporting crime to his local sheriff as another violation of the First Amendment absent any procedural or substantive Due Process. A First Amendment summary punishment. The State stipulated in the case that Huminski could speak to his local sheriff only if spoken to and reporting crime and other communication was prohibited. Excerpt prohibiting Huminski communication below, for life, whereby Huminski's local sheriff was a defendant in the "civil" case and the State of Florida was the plaintiff in State v. Huminski. No communication by a resident of the State to the entire State of Florida government. A bit over-broad considering the "parties".

With to Update Case w/ Defendants Information Listed US Fees Due & Owed in the amount \$
~~Defendant Not to be~~ Defendant Not to be ~~Dismissed~~ Dismissed ~~Any Future Filings are~~
~~To be~~ To be ~~Under the Signature of a Licensed Attorney~~ Under the Signature of a Licensed Attorney ~~in Communication with the Parties~~
 Pre-Sentence Investigation/Sentencing IN THE CIVIL CASE Full/Partial
 If omnibus has not been reviewed, what must be done to ensure that the case is properly handled.

4. Huminski did not only suffer the same First Amendment viewpoint based discrimination as the Plaintiffs, and Due Process/Equal Protection violations – he was incarcerated for his speech “crime” and, as a fully disabled American for the last 10 years determined by the Social Security Administration, continues to suffer shock and injury to mind and body and the expected products of a *void ab initio* criminal judgment including prejudice in obtaining credit, housing, employment and continued harassment from Ronald DeSantis, Et al. (Defendants) via on-going collection activities arising from the State v. Huminski void “criminal” judgment concerning fines, costs and fees. These ill-gotten gains and pecuniary windfalls demanded by the State, to this day, only apply to a statutory criminal conviction in a case that, in the best light, was a *sui generis* common law case – contempt, whereby, only the allegedly offended Court has the ability to hear and conduct a trial (i.e. only the 20th Circuit Court had subject matter jurisdiction to hear contempt in Huminski v. Town of Gilbert, Et al., 17-CA-421, not a County Court criminal case captioned as State v. Huminki). See Huminski v. State, 2d19-1247 (FL 2 DCA 2019) (hearing contempt private to the allegedly offended Court). See also Exhibit “B”.
5. Huminski’s long-time labeling of Florida as a Police State is not far from reality when criminal prosecutions commence absent the participation of the State, without service and proceed to judgment in the absence of any and all jurisdiction. What notoriously corrupt entity filed the commencement document in State v. Huminski remains a mystery and the paper contains no signature of an attorney representing the State of Florida, yet, a criminal conviction stands to this day *per se* prejudicing Huminski preventing him from obtaining a Florida Driver’s License and causing him injury and prejudice. Ronald DeSantis, Et al., has done their very best in other fora to cover-up the patently illegal and unconstitutional conduct foisted upon Huminski set forth in material herein.
6. Huminski’s attorney in State Court, Eugene Steele, was killed in a car accident after briefing in the Florida 3 DCA and the Court refused to meaningfully address *pro se* pleadings causing Huminski to dismiss that appeal because he didn’t have a voice that would be heard. All of Huminski’s assets to hire an attorney are now tied up in the late Attorney Steele’s estate or are gone.
7. Defendant DeSantis has directed his attorney general to obsessively oppose any attempt by Huminski regarding a collateral attack upon Huminski v. State or any attempt to vindicate his rights related to Huminski v. State in bad faith and with unclean hands on the part of the State of Florida concerning their securing of a criminal conviction absent

their authoring of a commencement document and absent service in State v. Huminski and with the speech banishment(s) on the record in that matter. See Exhibit “C”.

8. Ronald DeSantis, did direct his Attorney General to use any and all methods to continue the First Amendment prohibitions foisted upon Huminski in State v. Huminski on or about September 1, 2021.
9. The motivations of Ronald DeSantis, Et al. (Defendants) related to Huminski’s set of facts boils down to the silencing of dissent and core protected political expression that is protected at an elevated level compared to the speech of the Plaintiffs’ concerning discussion of LGBTQ issues. Both are serious constitutional violations. The speech prohibitions foisted upon Huminski are absolute as far as speech directed to the government of the State of Florida as ordered by the County Court in State v. Huminski.
10. Huminski would be happy to withdraw this paper if the State concedes to address the *void ab initio* judgment in State v. Huminski (stipulating to its *void ab initio* status thus abolishing the speech prohibitions) and stops its collection activities related to the criminal conviction and removes the criminal conviction from all records. Civilized settlement is always a preferable route to litigation, but, it requires an admission of wrong-doing which governmental entities rarely succumb to.
11. The discussion of this litigation in the schools of Florida is a potential target of the exceedingly vague Bill under attack by Plaintiffs extending to high school students that may be 18, 19 or even 20 years of age. At what age is the discussion of this lawsuit appropriate? ... one may ask, or at what age or grade level does the bill apply to and what specific content are to be condemned and prohibited?

Memorandum of Law

Under Fed. Rule Civ. P. 24(a)(2), upon timely application, anyone shall be permitted to intervene in an action when the applicant shows:

- (1) his application to intervene is timely;
- (2) he has an interest relating to the property or transaction which is the subject of the action;
- (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and
- (4) his interest is represented inadequately by the existing parties to the suit.

Fox v. Tyson Foods, Inc., 519 F.3d 1298, 1302-03 (11th Cir. 2008) (quoting *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989)).

Here, Huminski's request for intervention satisfies the requirements of Rule 24(a)(2) for intervention as of right.

1. Huminski's Motion to Intervene is Timely

The Eleventh Circuit has identified several factors relevant to determining whether a request for intervention is timely:

- (1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene;
- (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest;
- (3) the extent of prejudice to the proposed intervenor if the motion is denied; and
- (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely.

Georgia v. U.S. Army Corps of Eng'rs, 302 F.3d 1242, 1259 (11th Cir. 2002) (citing *Chiles*, 865 F.2d at 1213).

This Circuit has recognized that the requirement of timeliness "must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice." *U.S. Army Corps of Eng'rs*, 302 F.3d at 1259 (quoting *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970)).

2. Huminski has a Substantial Legal Interest in this Litigation

For an applicant's interest in the subject matter of the litigation to be cognizable under Rule 24(a)(2), it must be "direct, substantial and legally protectable." *U.S. Army Corps of Eng'rs*, 302 F.3d at 1249; *see also Chiles*, 865 F.2d at 1212-13 (noting that the focus of a Rule 24 inquiry is "whether the intervenor has a legally protectable interest in the litigation."). The inquiry on this issue "is 'a flexible one, which focuses on the particular facts and circumstances surrounding each [motion for intervention].'" *Chiles*, 865 F.2d at 1214 (quoting *United States v. Perry Cnty. Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978)).

Huminski has a legally protectable interest in this litigation as a party impacted as greatly, or more so, by the State of Florida's zeal to silence speech based upon discriminatory or

viewpoint based criteria. Huminski's speech, critical of government, is core protected political expression – dissent, afforded the highest level of First Amendment protection.

The Court orders issued in State v. Huminski have the same chilling effect upon Huminski's speech that the bill challenged by Equality Florida has upon the general population and both are grounded upon the same government motive – silencing of speech that the government finds distasteful.

3. The Disposition of the Instant Litigation May Impair Huminski's Ability to Protect his Interest

Huminski's ability to protect his substantial legal interest would be impaired absent intervention. Federal decisions interpreting and applying the provisions of the First Amendment, Due Process and Equal Protection are an important enforcement tool related to the Plaintiffs' and Huminski's claims concerning the discriminatory silencing of speech and content related silencing of speakers.

The outcome of this case, including the potential for appeals by existing parties, implicates *stare decisis* concerns that warrant Huminski's intervention. See Stone v. First Union Corp., 371 F. 3d 1305, 1309-10 (11th Cir. 2004) (recognizing that potential for a negative *stare decisis* effect "may supply that practical disadvantage which warrants intervention of right") (citing Chiles, 865 F.2d at 1214); see also United States v. City of Los Angeles, 288 F.3d 391, 400 (9th Cir. 2002) (holding that amicus curiae status may be insufficient to protect the rights of an applicant for intervention "because such status does not allow [the applicant] to raise issues or arguments formally and gives it no right of appeal"). While the existing parties to the litigation will not be prejudiced by Huminski's intervention, Huminski will be prejudiced if its request for intervention is denied. This intervention motion is prior to an appearance by Ronald DeSantis, Et al..

4. The Existing Parties Do Not Adequately Represent Huminski's Interests

The fourth and final element to justify intervention of right is inadequate representation of the proposed intervenor's interest by existing parties to the litigation because the background facts present a slightly different approach to the same legal issue – out of control governmental censorship. This element is satisfied if the proposed intervenor "shows that representation of his interest 'may be' inadequate." Chiles, 865 F.2d at 1214 (quoting Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n. 10 (1972)). The burden on the proposed intervenor to

show that existing parties cannot adequately represent its interest is “minimal.” *Stone*, 371 F.3d 1311; *U.S. Army Corps of Eng’rs*, 302 F.3d at 1259 (citing *Trbovich*, 404 U.S. at 538 n.10). Any doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action. *Loyd v. Ala. Dep’t of Corr.*, 176 F.3d 1336, 1341 (11th Cir. 1999); *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993).

Huminski's interest is in the enforcement of the First Amendment, Due Process and Equal Protection and to advance the public interest in eliminating speech discrimination and prohibitions.

In summary, Huminski meets the Rule 24(a) requirements for intervention as of right.

5. Huminski Meets the Requirements for Permissive Intervention

Fed. R. Civ. P. 24(b) provides for permissive intervention as an alternative basis for Huminski's intervention in this action. Rule 24(b) states, in relevant part:

- (1) On timely motion, the court may permit anyone to intervene who:
 - (A) is given a conditional right to intervene by a federal statute; or
 - (B) has a claim or defense that shares with the main action a common question of law or fact.
- (2) On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:
 - (A) a statute or executive order administered by the officer or agency; or
 - (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.
- (3) In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

The Eleventh Circuit has established a two-part test to guide the Court's discretion as to whether a party may intervene pursuant to Rule 24(b)(2): the applicant must show that “(1) his application to intervene is timely; and (2) his claim or defense and the main action have a question of law or fact in common.” *Chiles*, 865 F.2d at 1213 (citing *Sellers v. United States*, 709 F.2d 1469, 1471 (11th Cir. 1983)).

As discussed above, Huminski's application for intervention in this litigation is timely and Huminski's participation would neither unduly delay the proceedings nor prejudice the adjudication of the rights of the original parties. Additionally, Huminski's claims against the defendant share common questions of law with Plaintiff's claims, and rest upon common

By avoiding multiple lawsuits and coordinating discovery, intervention will lend
efficiency to the proceedings.

Accordingly, Huminski meets the requirements for permissive intervention.

III. CONCLUSION

For the foregoing reasons, the Court should grant the Motion to Intervene (i) as a matter of right
pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure, or, in the alternative, (ii)
permissively pursuant to Rule 24(b) Federal Rules of Civil Procedure.

Dated at Miami, Florida this 3rd day of April, 2022.
-/s/- Scott Huminski

Scott Huminski, pro se
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Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the U.S. Mails
and/or email and/or the e-filing system in this case.

Dated this 3rd day of April, 2022.
-/s/- Scott Huminski

Scott Huminski

<attachments>

EXHIBIT "A"

WHEN COURTS SUBVERT LAW TO BANISH A CRITIC

(EDITOR'S NOTE: Charles Levendosky, editorial page editor of the Casper (Wyo.) Star-Tribune, has a national reputation for First Amendment commentary. His email address is levendos(AT-sign)trib.com.)

By CHARLES LEVENDOSKY c. 2000 Casper (Wyo.) Star-Tribune

In Vermont, a number of state judges and one federal judge don't think citizens have the right to attend criminal or civil trials -- at least not those citizens who criticize judges or the decisions they make. Citizen-reporter Scott Huminski has been summarily barred from Vermont courts for his criticisms.

His case is a lesson in how those in power, even when they know they are wrong can subvert constitutional guarantees of liberty.

Although Huminski transports antiques for a living, for the past three years he has been on a crusade watching how his state courts operate. He attends state court proceedings and then publicizes what he considers misconduct with posters placed in the windows of his Bennington home and in the windows of his van. He also distributes information about the proceedings to attorneys and government officials.

One of Huminski's posters contained the headline, "Judge Corsones: Butcher of the Constitution" and beneath it, Huminski listed five reasons why he made that claim. One of the reasons, Huminski charged was that Rutland District Court Judge Nancy Corsones "strips defendants of the right to defense counsel."

That poster resulted in him being banished from "all lands and property under the control of the Supreme Court and the Commissioner of Buildings and General Services, including the Rutland District Court, parking areas, and lands."

Judge M. Patricia Zimmerman of the Rutland District Court signed this sweeping trespass notice on May 27, 1999. The Bennington County Sheriff's Department served Huminski with the notice.

Clearly, Huminski is a gadfly, troubling the plodding steer of state. He may be bothersome, but he isn't a criminal. He has done nothing illegal. He has only exercised his rights as a U.S. citizen.

Zimmerman's trespass order is the third one issued against Huminski, but it is the broadest. The first trespass notice, issued only days earlier, prohibited Huminski from entering the Rutland District Court or its parking lot. The second trespass order barred him from entering Corsones' property.

If Huminski were to even park his van in the parking lot of a Vermont court, he could be arrested immediately.

The trespass notices were filed for one reason only -- Huminski criticized a state judge and her decisions.

Law enforcement officials make no claim that Huminski was disruptive, a public nuisance, or interfered with the administration of justice. He was quiet and attentive while in the courtroom and the courthouse. He neither picketed the courthouse, nor engaged in vulgar or obscene expression while there. He simply posted his opinions.

The trespass orders have worked. They have kept a citizen-reporter from engaging in public debate about his state courts. Huminski has not been close to a Vermont court for nearly a year. His reporting has been silenced.

Instead, Huminski filed a lawsuit in a federal district court against Rutland and Bennington law

enforcement officials claiming they have violated the Vermont Constitution and his First Amendment rights to attend and report on court proceedings. He acted as his own attorney. And lost.

On Oct. 20, 1999, U.S. District Court Judge J.G. Murtha, apparently blinded by Huminski's harsh criticism of a judge, dismissed his claims. Murtha concluded that Huminski had "failed to demonstrate a clearly established federal right which the defendants violated." Never mind that the U.S. Supreme Court has ruled time and again that the people have a right to criticize government officials.

In his decision, Murtha quoted a U.S. Supreme Court case having to do with picketing near a courthouse -- a very narrow decision that has nothing at all to do the facts of Huminski's case. No one asserted that Huminski had picketed the Rutland District Court. He hadn't.

The Vermont Constitution, in Article 13 of its Declaration of Rights, states: "That the people have a right to freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of the press ought not to be restrained." How clear can it be? Courtroom proceedings are "transactions of government." And "the people have a right ... of writing and publishing their sentiments" concerning those transactions.

Now, Huminski has Robert Corn-Revere, an experienced and well-respected First Amendment attorney from Washington, D.C., handling his case. They have filed an appeal with the U.S. Second Court of Appeals.

According to Corn-Revere, he hopes that his client gets "a clear statement from the Second Circuit that local governmental officials don't have the ability to simply exclude people from the courthouses in the state of Vermont.

"More specifically, we would hope to get a ruling that eliminates the ability to simply use mechanisms like trespass law to silence critics of local judges. In short, what we're looking for is a clear declaration from the Second Circuit involving the fundamental First Amendment rights that are at stake in this case in the situation we're presented with here."

These Vermont law enforcement officials and judges have the astounding gall to seriously think that they can bar a citizen from the state courts for all time because that citizen criticized a judge. They make no bones about it.

In the briefs filed with the court of appeals, the attorneys for the sheriff's department, city law enforcement and city officials baldly state they have such a right.

And they note in their briefs that Huminski "has never attempted to enter courthouse property since service of the (trespass) notice, and thus has neither been denied access nor suffered any criminal sanction." The briefs assert, "Huminski has suffered no actual harm."

The series of events involving Huminski might be worse than a collusion of arrogance on the part of those in power to silence a critic.

Widespread ignorance of the foundation of liberty upon which this nation is built -- especially on the part of judges and law enforcement officials could eventually bring our nation crumbling down -- as if an earthquake had fractured the structural basis of our constitutional values. An earthquake of ignorance.

Arrogance or ignorance? That isn't much of a choice. Either way, Huminski has been unfairly and illegally persecuted by the power structure in Vermont. The harm he has suffered, all of us share. The outcome of this case affects us all.

EXHIBIT "B"

In The
Eleventh Judicial Circuit Court

SCOTT HUMINSKI,	)	
MICHAEL ESSIX,	)	CASE NUMBER:
PLAINTIFFS	)	21-CA-018435
V.	)	
STATE OF FLORIDA, ET AL.,	)	CIVIL ACTION
DEFENDANTS,	)	

MEMO re: FORGERY OF COURT ORDERS

NOW COMES, Scott Huminski (“Huminski”), and concerning the felony forgery and official misconduct that are significant elements in this matter states as follows:

1. A true and correct copy of the original and legitimate contempt show cause order as filed in Huminski v. Town of Gilbert, et al., 17-CA-421, 20th Circuit Court is in the Complaint and sworn in, Huminski’s Verified Ex Parte Motion for a Temporary Restraining Order. Complaint, D.E. 2, Exhibit A Page(s) 15-17 (exhibit page numbers are at the bottom right corner of the exhibit only). Also attached hereto as Exhibit “A” for convenience. (the “LEGITIMATE ORDER”).
2. A true and correct copy of the FORGED contempt show cause order as filed in State v. Huminski., 17-MM-815, Lee County Court is in the Complaint and sworn in, Huminski’s Verified Ex Parte Motion for a Temporary Restraining Order. Complaint, D.E. 2, Exhibit A Page(s) 19-21 (exhibit page numbers are at the bottom right corner of the exhibit only). Also attached hereto as Exhibit “B” for convenience. (the “FORGERY”).

CONFLICTING FILING DATES

THE FORGERY WAS FILED 25 DAYS LATER after modification

The LEGITIMATE ORDER,

06/14/2017 4:55 PM Filed Lee County Clerk of Court

170014603

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

The FORGERY

with 2 extra filing dates and missing clerk notations "13", "170014603" that were
digitally removed by the forger.

6/30/2017 4:52 PM Filed Lee County Clerk of Courts
6/5/2017 1:56 PM Filed Lee County Clerk of Court

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff

Civil Case No.: 17CA421

FILED 06/30/2017

**THE FORGERY HAS A HAND-WRITTEN DOCKET NUMBER ADDED TO
THE LEGITIMATE ORDER and Digital deletions**

Judicial orders can not be treated like used clothing at a Goodwill Store and
recycled and reused in multiple cases in multiple courts.

The LEGITIMATE ORDER,

SCOTT HUMINSKI,
Plaintiff

Civil Case No.: 17CA421

v.
TOWN OF Gilbert, AZ, et al

ORIGINAL FOR SERVICE

SHERIFF
ADVISORY
VED
PM 4:13

Criminal Case No. _____

The FORGERY

with "ORIGINAL FOR SERVICE" and the Sheriff's stamp digitally removed by the forger and a County Court Docket Number hand-written in by the forgery felon. The forgery felon also added some numerals where a sheriff department stamp used to exist.

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff

Civil Case No.: 17CA421

v.
TOWN OF Gilbert, AZ, et al

1/28/17

Criminal Case No. 17-MM-000815

ALL SHERIFF DEPARTMENT NOTATIONS DIGITALLY REMOVED BY
THE FORGERY FELON

The LEGITIMATE ORDER,

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

Sheriff Lee County, Florida
☒ SERVED ☐ NOT SERVED
 TIME 08:00 AM DATE 6-13 2017
 COMMENT PERS SERV.
 DEPUTY RLS 0601

1 6/6 1400 NO ANSWER
 6/7 1012 "
 6/8 805 "



The FORGERY

with the Sheriff's notations digitally removed by the forgery felon.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) – attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

Case 4:22-cv-00134-AW-MJF Document 17 Filed 04/05/22 Page 16 of 66

**THE FORGERY FELON DIGITALLY ERASED A TIME STAMP AND
REPLACED IT WITH THE DATE OF THE FORGERY**

The LEGITIMATE ORDER,

		Other Relief (specifically Paragraph 2) -- attached hereto as Exhibit B
--	--	---

COUNT 1: INDIRECT CRIMINAL CONTEMPT

In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss

FILED 05/14/2017

The FORGERY

with the valid Circuit Court time/date stamp digitally removed by the forgery felon and the date of the forgery has replaced it.

		Other Relief (specifically Paragraph 2) -- attached hereto as Exhibit B
--	--	---

COUNT 1: INDIRECT CRIMINAL CONTEMPT

In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss

FILED 05/25/2017

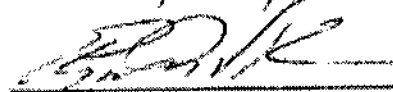
Case 4:22-cv-00134-AW-MJF Document 17 Filed 04/05/22 Page 17 of 66
THE FORGERY FELON "LIFTED" THE JUDICIAL SIGNATURE OF THE
CIRCUIT COURT ORDER TO CREATE A FORGED COUNTY COURT
ORDER

The LEGITMATE ORDER,

IT IS FURTHER ORDERED that the Sheriff of this County serve this Order to Show Cause by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on

6/5/17



Circuit Judge, Elizabeth V. Krier

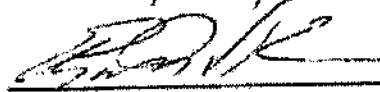
The FORGERY with the digitally "lifted" judicial signature with a "lifted" date. The felony forger didn't bother to change the date of the signature to make a more believable forgery. A reckless criminal who may have experience in getting away with forged court orders in the 20th Circuit without being challenged before.

Complacency for this felon led to a sloppy crime.

IT IS FURTHER ORDERED that the Sheriff of this County serve this Order to Show Cause by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on

6/5/17



Circuit Judge, Elizabeth V. Krier

Notably, it is humanly impossible to replicate a signature that is digitally perfect on 6/5/2017 and 6/30/2017 and it is impossible to do it with digital precision related to its alignment with the other text in the document. A bold and very poor forgery also constituting official misconduct which can be prosecuted for 2 years after the forger leaves office or ends employment with the State of Florida.

THE FORGERY FELON DIGITALLY REMOVES THE VALID FILED DATE
TO AVOID CONTRADICTION WITH THE FORGERY

The LEGITMATE ORDER,

6/15/17
pm
S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at
douglas.knox@quarles.com; keely.morton@quarles.com; docketfi@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at
serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at
Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at
kendrake@didlawyers.com; dweiss@didlawyers.com

I CERTIFY THIS DOCUMENT TO BE
A TRUE & CORRECT COPY OF THE
RECORD ON FILE IN MY OFFICE.

JUN - 5 2017

Linda Boggett, Clerk Circuit
Court Lee County, Florida
By: [Signature] D.C.



3

The FORGERY

which was never certified by the clerk on appeal.

Copies to:

☒ State Attorney's Office
☒ Public Defender's Office

6/15/17
pm
S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at
douglas.knox@quarles.com; keely.morton@quarles.com; docketfi@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at
serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at
Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at
kendrake@didlawyers.com; dweiss@didlawyers.com

3

There also exist in these cases, 3 different versions of the "same" judicial recusal order also 2 of which are forgeries located at the Complaint, D.E. 2, Exhibit "A"

Forgery and official misconduct, both felonies, appear to be the *modus operandi* of
these courthouse criminals.

The legitimate original is followed by the two forgeries, (see next page)

THE ORIGINAL

8/2/2017 12:10 PM Filed Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

SCOTT HUMINSKI

Plaintiff

CASE NO: 17-CA-421

vs.

TOWN OF GILBERT, AZ, et al

Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.



Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:

Scott Huminski, pro se Plaintiff at s_huminski@live.com

Kenneth R. Drake, attorney for Scribd, Inc at kendrake@didlawyers.com; dweiss@didlawyers.com

S. Douglas Knox & Keely Morton, attorneys for City of Glendale at douglas.knox@quarles.com;

keely.morton@quarles.com; docketfi@quarles.com

Robert D. Pritt & James D. Fox, attorneys for City of Surprise AZ at serve.rpritt@ralaw.com;

jfox@ralaw.com; serve.jfox@ralaw.com

Robert C. Sherman, attorneys for Lee County Sheriff at Robert.shearman@henlaw.com;

Courtney.ward@henlaw.com

COURT ADMINISTRATION

8/1/17

FELONY FORGERY OF JUDICIAL RECUSAL ORDER # 1

Judicial recusal order forgery number one filed two weeks after the legitimate order, (1) the original date and time filing stamp is digitally erased and replaced with a new date, (2) the Circuit Court docket number is digitally erased and replaced with a County Court docket number, the entire distribution list along with the date in the left margin next to it is digitally erased and replaced with a new distribution list and (3) it is stamped "COPY" "COPY". See next page.

8/14/2017 2:57 PM Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

STATE OF FLORIDA

CASE NO: 17-MM-815

VS.

SCOTT HUMINSKI

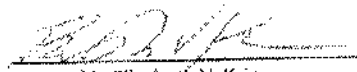
Defendant

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.


Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:
Scott Huminski at s_huminski@live.com
State Attorney's Office
Public Defender's Office
COURT ADMINISTRATION

 COPY

 CC /

FELONY FORGERY OF JUDICIAL RECUSAL ORDER # 2

Judicial recusal order forgery number two filed two weeks after the legitimate order and over an hour after the first forgery in this series. Apparently the forgery felon was not pleased with their initial forgery draft and came up with this new version with (1) the original date and time filing stamp is digitally erased and replaced with a new date and time an hour and a half later than the first forgery, (2) the Circuit Court docket number has been restored contrary to the first forgery above, (3) it is stamped "COPY" at a different portion of the document than the first forgery above and (4) the original distribution list has been restored absent the date and initials in the left margin next to the distribution list that was digitally erased by the forgery felon. See next page.

8/14/2017 3:33 PM Filed Lee County Clerk of Courts

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

SCOTT HUMINSKI

Plaintiff

CASE NO: 17-CA-421

vs.

TOWN OF GILBERT, AZ, et al

Defendant



COPY

ORDER OF DISQUALIFICATION

THIS CAUSE having come before this Court on 8/1/17 on its own Motion, it is ORDERED and ADJUDGED:

Pursuant to Cannon 3E of the Florida Code of Judicial Conduct, the undersigned Judge hereby disqualifies herself from cases involving the above Plaintiff, including the above styled Case.

DONE and ORDERED this 1st day of August, 2017.

Honorable Elizabeth V. Krier
Circuit Court Judge, 20th Circuit

Conformed copies to:

Scott Huminski, pro se Plaintiff at s_huminski@live.com
Kenneth R. Drake, attorney for Scribd, Inc at kendrake@dldlawyers.com; dweiss@dldlawyers.com
S. Douglas Knox & Keely Morton, attorneys for City of Glendale at douglas.knox@quarles.com;
keely.morton@quarles.com; docketfl@quarles.com
Robert D. Pritt & James D. Fox, attorneys for City of Surprise AZ at serve.rpritt@ralaw.com;
jfox@ralaw.com; serve.jfox@ralaw.com
Robert C. Sherman, attorneys for Lee County Sheriff at Robert.shearman@henlaw.com;
Courtney.ward@henlaw.com

COURT ADMINISTRATION

WHEREFFORE, a forgery by court personal is not a valid charging document precluding subject matter jurisdiction.

Dated in Flagler County, Florida this 16th day of September, 2021.

-/s/- Scott Huminski

Scott Huminski, Pro Se
P.O. Box 353820
Palm Coast, FL 32137
(239) 300-6656
S_huminski@live.com

Certificate of Service

Plaintiff, Scott Huminski, hereby certifies that this paper and any attachment(s) have been served upon the parties of record via the e-filing system on this date.

Dated this 16th day of September, 2021.

-/s/- Scott Huminski

Scott Huminski

,<ATTACHMENTS>

EXHIBIT “A”

06/14/2017 4:55 PM Filed Lee County Clerk of Court

170014603

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff

Civil Case No.: 17CA421

v.
TOWN OF Gilbert, AZ, et al**ORIGINAL FOR SERVICE**2017 JUN -5 PM 1:13
CLERK OF THE CIRCUIT
LEE COUNTY, FL
RECEIVED

Criminal Case No. _____

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male	EYE COLOR: ?
RACE: Caucasian	HAIR COLOR: Brown
HEIGHT: approx. 5 ft 10 in.	LAST KNOWN ADDRESS: 24544 Kingfish St.
WEIGHT: ?	Bonita Springs, FL 34134
DOB: 12/1/59	

ORDER TO SHOW CAUSE

This cause comes before the court for review based upon the alleged conduct of SCOTT HUMINSKI for the issuance of an Order to Show Cause directed to SCOTT HUMINSKI for violation of the Orders set forth below copies of which are attached hereto and made a part hereof.

The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
4/19/17	17CA421	Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order (specifically Paragraphs 1, 2 & 7) - attached hereto as Exhibit A
4/19/17	17CA421	Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and

Sheriff, Lee County, Florida

☒ SERVED ☐ NOT SERVED
 TIME 0800AM, DATE 6-13, 2017
 COMMENT PERS. SERV.
 DEPUTY RLSW 0601

1 6/6 1400 NO ANSWER
 6/7 1012 "
 6/8 808 "



15

FILED 05/14/2017

		Other Relief (specifically Paragraph 2) – attached hereto as Exhibit B
--	--	--

COUNT 1: INDIRECT CRIMINAL CONTEMPT

In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief, SCOTT HUMINSKI was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney and specifically provided that an Order to Show Cause might be entered against him if he did so (Paragraph 2). SCOTT HUMINSKI has continued to file multiple documents in the Court file in contradiction to these Orders as evidenced by the attached composite Exhibit C.

COUNT 2: INDIRECT CRIMINAL CONTEMPT

In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees (see Paragraph 1 & 2). SCOTT HUMINSKI was specifically ordered to direct such contact to counsel for Mike Scott (see Paragraph 2). SCOTT HUMINSKI has repeatedly violated this Order by contacting Sheriff Scott, his agents and employees since the execution of the Court's orders – see the emails attached as composite Exhibit D.

NOW, THEREFORE, you SCOTT HUMINSKI are hereby ORDERED to appear before this court before Judge KRIER on THURSDAY, 6/29/17, at 1:30 p.m., in Room 4H of the Lee County Courthouse, located at 1700 Monroe Street, Ft. Myers, Florida 33901, to be arraigned. THIS IS A CRIMINAL PROCEEDING. A subsequent trial will be scheduled requiring Respondent to show cause why he should not be held in contempt of this court for violation of the above Orders. Punishment, if imposed, may include a fine and incarceration. Should the court determine, based on the evidence presented at trial, that the conduct of SCOTT HUMINSKI warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find him guilty of civil contempt and impose appropriate civil sanctions.

IF YOU FAIL TO APPEAR as set forth above, a warrant for your arrest or a writ of bodily attachment may be issued to effectuate your appearance.



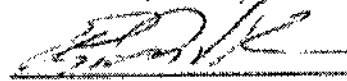
The court hereby appoints the STATE ATTORNEY'S OFFICE to prosecute the case.

The Court hereby advises SCOTT HUMINSKI that he is entitled to be represented by counsel and if he can't afford an attorney, that one may be appointed for him in this criminal contempt proceeding ONLY (not in the civil Case). This Court hereby appoints the PUBLIC DEFENDER'S OFFICE to provisionally represent SCOTT HUMINSKI at the above Arraignment proceeding pending a determination of indigency. This Court anticipates that SCOTT HUMINSKI will be found to be indigent.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IT IS FURTHER ORDERED that the Sheriff of this County serve this Order to Show Cause by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on 6/5/17



Circuit Judge, Elizabeth V. Krier

Copies to:

- ☒ State Attorney's Office
- ☒ Public Defender's Office

6/5/17
mw
S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at douglas.knox@quarles.com; keely.morton@quarles.com; docketfi@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com

I CERTIFY THIS DOCUMENT TO BE
A TRUE & CORRECT COPY OF THE
RECORD ON FILE IN MY OFFICE.

JUN - 5 2017

Linda Dognett, Clerk Circuit
Court, Lee County, Florida
By: [Signature] D.C.



EXHIBIT “B”

6/30/2017 4:52 PM Filed Lee County Clerk of Courts
6/5/2017 1:56 PM Filed Lee County Clerk of Court

Filed 06/30/2017

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR LEE COUNTY, FLORIDA

CIVIL CASE CAPTION

SCOTT HUMINSKI,
Plaintiff

Civil Case No.: 17CA421

v.

TOWN OF Gilbert, AZ, et al

Criminal Case No. 17-MM-000815

DESCRIPTION OF SCOTT HUMINSKI	
GENDER: Male	EYE COLOR: ?
RACE: Caucasian	HAIR COLOR: Brown
HEIGHT: approx. 5 ft 10 in.	LAST KNOWN ADDRESS: 24544 Kingfish St.
WEIGHT: ?	Bonita Springs, FL 34134
DOB: 12/1/59	

ORDER TO SHOW CAUSE

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The Orders that SCOTT HUMINSKI is alleged to be in violation of are:

DATE executed by Court	CASE No.	ORDER TITLE
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FILED 05/25/2017

		Other Relief (specifically Paragraph 2) – attached hereto as Exhibit B
--	--	--

COUNT 1: INDIRECT CRIMINAL CONTEMPT

In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically ordered that any further pleadings be signed by a licensed attorney representing the Plaintiff (Paragraph 7). In the Order on Scribd, Inc's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory, Injunctive and Other Relief, SCOTT HUMINSKI was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney and specifically provided that an Order to Show Cause might be entered against him if he did so (Paragraph 2). SCOTT HUMINSKI has continued to file multiple documents in the Court file in contradiction to these Orders as evidenced by the attached composite Exhibit C.

COUNT 2: INDIRECT CRIMINAL CONTEMPT

In the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees (see Paragraph 1 & 2). SCOTT HUMINSKI was specifically ordered to direct such contact to counsel for Mike Scott (see Paragraph 2). SCOTT HUMINSKI has repeatedly violated this Order by contacting Sheriff Scott, his agents and employees since the execution of the Court's orders – see the emails attached as composite Exhibit D.

NOW, THEREFORE, you SCOTT HUMINSKI are hereby ORDERED to appear before this court before Judge KRIER on THURSDAY, 6/29/17, at 1:30 p.m., in Room 4H of the Lee County Courthouse, located at 1700 Monroe Street, Ft. Myers, Florida 33901, to be arraigned. THIS IS A CRIMINAL PROCEEDING. A subsequent trial will be scheduled requiring Respondent to show cause why he should not be held in contempt of this court for violation of the above Orders. Punishment, if imposed, may include a fine and incarceration. Should the court determine, based on the evidence presented at trial, that the conduct of SCOTT HUMINSKI warrants sanctions for civil contempt in addition to or instead of indirect criminal contempt, the court reserves the right to find him guilty of civil contempt and impose appropriate civil sanctions.

IF YOU FAIL TO APPEAR as set forth above, a warrant for your arrest or a writ of bodily attachment may be issued to effectuate your appearance.

Filed 05/13/2017

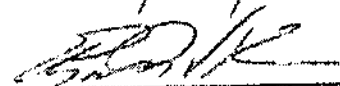
The court hereby appoints the STATE ATTORNEY's OFFICE to prosecute the case.

The Court hereby advises SCOTT HUMINSKI that he is entitled to be represented by counsel and if he can't afford an attorney, that one may be appointed for him in this criminal contempt proceeding ONLY (not in the civil case). This Court hereby appoints the PUBLIC DEFENDER's OFFICE to provisionally represent SCOTT HUMINSKI at the above Arraignment proceeding pending a determination of indigency. This Court anticipates that SCOTT HUMINSKI will be found to be indigent.

If you are a person with a disability who needs any accommodation to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IT IS FURTHER ORDERED that the Sheriff of this County serve this Order to Show Cause by delivering copies to SCOTT HUMINSKI, with proof of Sheriff's service.

DONE AND ORDERED in Lee County, Florida, on 6/5/17



Circuit Judge, Elizabeth V. Krier

Copies to:

- ☒ State Attorney's Office
- ☒ Public Defender's Office

6/5/17
pw
S. Douglas Knox & Keely Morton, attorneys for Defendant-City of Glendale at douglas.knox@quarles.com; keely.morton@quarles.com; dockettl@quarles.com
Robert D. Pritt & James D. Fox, Attorneys for City of Surprise, AZ at serve.rpritt@ralaw.com; jfox@ralaw.com; serve.jfox@ralaw.com
Robert Sherman, attorneys for Defendant-Sheriff Mike Scott at Robert.sherman@henlaw.com; Courtney.ward@henlaw.com
Kenneth R. Drake & Doron Weiss, attorneys for SCRIBD, INC. at kendrake@dldlawyers.com; dweiss@dldlawyers.com

Exhibit “C”

RECEIVED, 03/13/2022 01:13:21 PM, Clerk, Third District Court of Appeal

In The
Third District Court of Appeal

SCOTT HUMINSKI,	)	Number: 3d21-1920
APPELLANT,	)	
v.	)	
STATE OF FLORIDA, ET AL,	)	
APPELLEES.	)	

**EMERGENCY VERIFIED MOTION FOR EMERGENCY RELIEF, RULE
9.300(c)**

NOW COMES, Appellant Scott Huminski (“Huminski”), and pursuant to F.R.A.P. 9.300(c) moves, states, deposes, and swears, as follows,

1. The gravamen of the complaint in the Court below is that the State of Florida secured a void judgment in State v. Huminski, 17-MM-815, Lee County Court absent authoring or filing any commencement document that would vest jurisdiction in the County Court and absent standing to prosecute which is absolutely true and correct because the County Court commencement document was merely an altered court order from Huminski v. Town of Gilbert, et al., 17-CA-421, 20th Circuit, created on 6/30/2017, after modification of an original and legitimate order issued in Huminski v. Gilbert, et al. on 6/5/2017.

2. Attached hereto as Exhibit “A” is a true and correct copy of Huminski’s affidavit as filed in this appeal on 3/7/2022, AFFIDAVIT OF S. HUMINSKI #2 RE: State’s forgery of court orders/unclean hands, which contain true and correct fact statements as to the use of forgery to initiate State v. Huminski.

3. The commencement document in State v. Huminski attached hereto in Exhibit “A” was not signed by any legitimate State prosecutorial authority.

4. The commencement document in State v. Huminski attached hereto in Exhibit “A” was not authored by any legitimate State prosecutorial authority and it is a modified version of an order issued in Huminski v. Town of Gilbert, et al., a civil case where the State of Florida was not a party.

5. The commencement document in State v. Huminski attached hereto in Exhibit “A” was not filed with 117 pages of attachments that it referenced and that

do exist in the Circuit Court version of the order in Huminski v. Town of Gilbert, et al.

6. Not only was Huminski never served in State v. Huminski, 117 pages of attachments were never filed with the commencement document or served.

7. There exists no proof of service in State v. Huminski.

8. Huminski was never served with the 117 pages of attachments in the version of the commencement document that exists in Huminski v. Town of Gilbert, et al. and the server of this document (in the Circuit Court matter) testified at hearing/trial that he did not serve any attachments.

9. Huminski was placed on pre-trial supervision in State v. Huminski.

10. Huminski, at conviction in State v. Huminski, was assessed by the Court every cost and fees that would apply only to criminal convictions in Florida.

11. Attached hereto as Exhibit "B" is a true and correct copy of the final judgment form from State v. Huminski listing the costs and fees levied upon Huminski.

12. Exhibit "A" contains true and correct versions of 3 judicial recusal orders, two of which are forgeries. The only authentic order exists in Huminski v. Town of Gilbert.

13. Exhibit "B" contains a term that was requested by the State at trial that Huminski be barred from contacting the State of Florida or his local sheriff concerning any matter subsequent to conviction which prevented Huminski from reporting several crimes in his town of residence which was solely served by a Sheriff's Department.

14. The no contact with his local sheriff provision of the previous paragraph was part of Huminski's pre-trial supervision, however, the State later stipulated that Huminski could contact law enforcement to report crime.

15. A true and correct copy of the stipulation mentioned in the prior paragraph is attached hereto as Exhibit "C".

16. All materials and fact represented in the attached papers filed herewith are true and correct.

17. Huminski asserts with the same force and effect as if more fully set forth herein all papers filed by him as a *pro se* litigant in this appeal.

18. This paper requests emergency relief because the State is; (1) continuing to attempt to breathe life into a hopelessly void judgment in State v. Huminski, (2) continues enforcement efforts concerning the void judgment and (3) continues to this day to attempt to profit off the ill-gotten gains related to the void judgment via ongoing and relentless collection efforts causing Huminski prejudice and discrimination in employment, housing, obtaining credit and all harm, injure and prejudice that flows from a criminal conviction.

19. Huminski has been confirmed fully disabled by the Social Security administration and medical providers Leonard Lado, M.D., Karen Huffer and Rebecca Potter, LMHC, for over 10 years related to his PTSD, General Anxiety Disorder, social phobia and the State's continuing conduct related to the void judgment continues to cause Huminski shock and injury to body and mind. The collection activities of the State must be enjoined to mitigate and perhaps end the injury, damage and prejudice to Huminski related to the State's obsession with the void judgment.

20. Huminski is unable to obtain a Florida Driver's License with outstanding criminal fines and fees causing him harm and prejudice and many of the costs/fines/fees foisted upon Huminski related to the void judgment are only criminal in nature as set forth by the statutes used to justify the imposition of them.

21. Attached hereto as Exhibit "D" is a true and correct copy of the appearance of the public defender in State v. Huminski mistakenly citing inapplicable criminal rules in a *sui generis* common law case. Upon information and belief treating contempt in routine civil cases as a statutory criminal offense in the 20th Circuit is standard operating procedure (SOP) that even the entire public defender office has accepted as commonplace and proper. Huminski directed the public defender not to fall for this governmental scheme without success because when a prosecutor and the presiding judge are "on board" concerning the practice of converting contempt in a civil case with a "CA" designation to a routine statutory crime, an over-burdened public defender has little recourse or time to object. Huminski's counsel at the time was a Georgetown Law School graduate.

22. Attached hereto as Exhibit "E" is a true and correct copy of a "minutes" entry in State v. Huminski (although not captioned in State v. Huminski)

predating the existence of that case memorializing the State's plot to transfer of the civil "CA" case to a "criminal" County Court case to terrorize Huminski as follows,

"Also to be discussed transfer of civil case to criminal".

Upon information and belief cases such as Huminski v. Town of Gilbert, et al., 17-CA-421 never get transferred to "criminal" County Court in jurisdictions other than the 20th Circuit. County Courts (courts of inferior and limited jurisdiction) do not have jurisdiction to take over matters from the Circuit Courts and no Rule, Statute or other legitimate authority provides for such a transfer in the Courts of Florida.

23. Attached hereto as Exhibit "F" is a true and correct copy of the ruling in Huminski v. State, 2d19-1247, whereby the Second District Court of Appeal found that hearing and trying contempt is private to the offended Court.

24. Upon information and belief, the Court in Huminski v. State, 2d19-1247 statement that,

"§ 38.22, Fla. Stat. (2018) ("Every court may punish contempts against it . . ." (emphasis added))",

concisely settles all debate related to this appeal, the matter below and all collateral cases because the Court's emphasis on the words "against it" (ie. Circuit Court) convincingly exemplifies and determines that all papers filed in this appeal and the Courts below by the State were filed for the sole reason to vex, further frivolous arguments, abuse the criminal justice system and to burden the Florida Courts all prejudicial to the administration of justice. Sanctions should be levied under this Courts inherent disciplinary and supervisory powers.

25. On September 17, 2021 when Huminski hired counsel, Huminski directed the late Attorney Steele thru his alleged assistant Ronald Humphreys to file an appearance and continuance related to the scheduled hearing and counsel filed an appearance several hours after the hearing that dismissed the case below and caused this appeal. Upon information and belief, this advice came solely from Mr. Humphreys without participation of Huminski's late attorney.

26. On September 21, 2021, subsequent to the hearing dismissing the case below, Huminski directed counsel to file a motion for emergency relief to achieve the goals of this paper and Huminski never heard back from counsel despite repeatedly requesting this relief continually from counsel during the last six months.

27. Huminski has never spoken to Attorney Steele and has never engaged in any 2-way conversation with his former late attorney in any fora.

28. On dozens of occasions over the last 6 months Huminski requested counsel advise him; (1) why all legal fees in this matter went to the closely-held corporation of his assistant, Ronald Humphrey, Lawstaff, Inc. (a corporation headquartered at the private residence of Mr. Humphreys), (2) why there wasn't a timely appearance in the Court below, (3) why unclean hands was not proffered after the State's answer brief and (4) why counsel was not filing for emergency relief related to the collection activities of the State and collateral issues to which Huminski only received the response of silence from counsel or his alleged assistant, Mr. Humphreys.

29. To this date, Huminski believes Mr. Humphreys, a non-attorney, was sole counsel on this case and he received all client funds related to representation into his corporation Lawstaff, Inc. and paid a stipend to John Contini, a disbarred attorney, for referral of this case to him and paid a stipend to Attorney Steele for using his Bar credentials. (See Huminski's 2 notices of retention of counsel filed on September 17, 2021 and September 20, 2021 in the Court below)

30. Mr. Humphreys verbally advised Huminski to attend the hearing of September 21, 2021 *pro se* in a case where a vexatious litigant issue was pending. Upon information and belief, Mr. Steele nor any licensed attorney would advise a client in such a manner and this advice was a product of the unauthorized practice of law, UPL.

MEMORANDUM OF LAW

Huminski asserts the arguments of his late attorney filed in this matter especially including the bad faith argument posed by counsel, or Mr. Humphreys, in the motion for attorney fees.

State v. Huminski, 17-MM-815, Lee County Court, is a hopelessly void criminal judgment (in a *sui generis* common law case) that was commenced; (1) absent the filing of a pleading authored by a prosecutorial representative of the State, (2) absent a signature of an authorized representative of the State, (3) absent service upon Huminski and (4) filing in contravention to F.S. § 831.01 (felony

forgery) and F.S. § 838.022 (felony official misconduct) acts of moral turpitude, bad faith and justifying a finding of unclean hands. See generally Huminski's affidavit AFFIDAVIT OF S. HUMINSKI #2 RE: State's forgery of court orders/unclean hands filed in this matter on 3/7/2022. Accord Huminski v. State, 2d19-1247. See Exhibit "F".

VOID JUDGMENTS

In Florida, a "void judgment" is so defective that it is deemed never to have had legal force and effect. Sterling Factors Corp. v. U.S. Bank Nat. Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007)

Trial courts "lack jurisdiction" until proper pleadings are filed. Lovett v. Lovett, 112 So. 768, 776 (Fla. 1927) accord Lewis v. Lewis, 78 So.2d 711, 712. The government's relied upon document to commence State v. Huminski is not a proper pleading. A trial court's lack of subject-matter jurisdiction makes its judgment void. NWT v. LHD (In re DNHW), 955 So.2d 1236, 1238 (Fla. 2d DCA 2007)

CONTEMPT A SUI GENERIS COMMON LAW OFFENSE IS NOT PROSECUTED BY THE STATE AS A PLAINTIFF

Concerning *sui generis* common law offenses, "Proceedings for contempt are sui generis (of their own class) in their nature and not strictly either civil or criminal, as those terms are commonly used. But courts have classified and termed them, "civil" and "criminal."" Dangel on Contempt, page 5, Section 12. The State's positioning themselves as a Plaintiff in State v. Huminski when they were never a party in the case containing the alleged contempt, Huminsk v. Town of Gilbert, et al., was accomplished by notoriously corrupt conduct that remains a mystery absent a criminal inquest into the forgery and official misconduct that the State has successfully obfuscated so far in the Court below and with its papers filed in this Court.

The Florida Supreme Court did not get it wrong in the contempt case cited above Lewis v. Lewis, ~~State v. Lewis~~ would have been just as corrupt of a caption as State v. Huminski. Whatever underhanded method was used to get the case docketed as State v. Huminski, it constitutes an attack upon the integrity of the

justice system and prejudices the administration of justice and the filings of the State in this matter were made in bad faith with unclean hands, more specifically, absolutely filthy hands attempting to profit off of their ill-gotten gains with a void judgment.

STATE V. HUMINSKI WAS PROSECUTED IN THE ABSENCE OF ALL
JURISDICTION

In Pennoyer v. Neff, 95 US 714, 732 (1878), the U.S. Supreme Court held that the judgment of a court lacking personal jurisdiction violated the Due Process. Huminski was not served by the State in State v. Huminski but was compelled to attend court proceedings in the quite irregularly initiated case, State v. Huminski, to avoid incarceration for failure to appear in the State's so-called "criminal" case absent any filing by the State initiating the prosecution. Accord Huminski v. State, 2d19-1247. See Exhibit "F".

HEARING OF CONTEMPT IS PRIVATE TO THE ALLEGEDLY OFFENDED
COURT

The Florida Supreme Court held that the hearing and trying of contempt is private to the allegedly offended court in South Dade Farms v. Peters, 88 So. 2d 891 - Fla: Supreme Court 1956 while adopting U.S. Supreme Court precedent as follows:

"In the opinion last cited this court adopted the language of the Supreme Court of the United States in the leading case of Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 31 S.Ct. 492, 501, 55 L.Ed. 797, from which we quote also the following:

"There has been general recognition of the fact that the courts are clothed with this power, and must be authorized to exercise it without referring the issues of fact or law to another tribunal or to a jury in the same tribunal. For, if there was no such authority in the first instance, there would be no power to enforce its orders if they were disregarded in such independent investigation. Without authority to act promptly and independently the courts could not administer public justice or enforce the rights of private litigants. Bessette v. W.B. Conkey Co., 194 U.S. 324 337, 24 S.Ct. 665, 48 L.Ed. [997] 1005."

in stark contrast to the hearing and conviction of Huminski in the Lee County Court for alleged contempt occurring before the 20th Circuit Court in Huminski v. Town of Gilbert, AZ, et al., 17 CA-421, 20th Circuit, with a criminal prosecution

brought in State v. Huminski, Lee County Court. Accord Huminski v. State, 2d19-1247. A court of inferior jurisdiction heard a Circuit Court contempt case without any statutory authority in a so-called “criminal” misdemeanor case (indicated by the “MM” designation and the State being named as Plaintiff) whereby he was placed on pre-trial supervision and assessed every cost and fee applicable only to criminal prosecutions (crimestoppers fund, costs of prosecution, etc.). The State was not a party in Huminski v. Gilbert, but, by an unknown yet, patently illegal scheme, bullied its way into the position of Plaintiff absent the filing of a shred of paper commencing State v. Huminski.

The dissent in TYRONE JENKINS, Appellant, v. STATE OF FLORIDA, Appellee, No. 4D20-1171 [June 23, 2021] clearly drives the point home concerning subject matter jurisdiction in contempt cases stating in pertinent part,

“Appellant was convicted of indirect criminal contempt for sending an expletive-laced diatribe to a circuit court judge after the judge dismissed his civil case, accusing the judge of incompetence and impugning his integrity. On appeal, appellant claims that the county court judge who tried the contempt proceeding lacked subject matter jurisdiction. I agree that the county court lacked jurisdiction, and I would reverse.”

Accord Huminski v. State, 2d19-1247. See Exhibit “F”.

The State’s own admission that at least one of the fees imposed upon Huminski at “criminal” conviction in State v. Huminski did not apply to contempt is compelling, stating in pertinent part in the State of Florida brief filed in Huminski v. State, 2D19-1912, Florida Attorney General, 2/21/2020,

“ISSUE FOUR WHETHER THE TRIAL COURT ERRED IN IMPOSING A \$50 COST OF PROSECUTION FOR THE OFFENSE OF CRIMINAL CONTEMPT.
[RESTATED].

Appellant’s fourth claim, that the court impermissibly imposed a cost of prosecution in this case, appears to have merit. Because contempt is a common law crime and the statutes governing contempt do not explicitly allow for the cost of prosecution to be imposed, Appellee concedes that this cost was seemingly imposed in error and the case should be remanded for the limited purpose of striking the cost from Appellant’s judgment and sentence. “

Apparently, the author of the above didn’t get the memo that the Rule of Law in State v. Huminski was to be ignored and illegal governmental conduct covered-up.

As this case exemplifies, in criminal justice matters, the State rarely admits error and uses the power of criminal prosecution as a tool of terror. Notable, is the State's characterization of contempt as a "crime" when in reality, under Florida authority, it is a *sui generis* common law offense. The confusion concerning contempt extends to the Florida Attorney General's office.

BAD FAITH

At hearing in this matter, the presiding judge asked the State if they wanted her to dismiss on their other paper as well which would have brought in the merits. The State informed the court that they did not wish that motion, filed weeks before the granted motion, to be heard. This maneuver by the State was solely intended as a backup plan to extend litigation unnecessarily. A technique employed by defendants with deep pockets to wear out and adversary and outspend an adversary that doesn't have endless funding from the State treasury. This scheme, used in a quasi-criminal context such as the instant case, has no place in a civilized society and offends public policy.

LEGISLATIVE INTENT

The State's use of the vexatious litigant statute to protect, preserve, enforce and profit from a hopelessly void criminal judgment was never a notion that the legislative branch had contemplated or would endorse.

As held by the Florida Supreme Court in Borden v. East-European Ins. Co., 921 So. 2D 587,

"It is a fundamental principle of statutory interpretation that legislative intent is the "polestar" that guides this Court's interpretation. See State v. J.M., 824 So.2d 105, 109 (Fla.2002); Reynolds v. State, 842 So.2d 46, 49 (Fla.2002)."

CONCLUSION

The aforementioned constitutes an abuse of the power of criminal prosecution that shocks the conscience and epitomizes a manifest injustice. This conduct also constitutes *bad faith* and *unclean hands* on the part of the State of Florida related

to these matters. The State can request no relief from this Court or the Court Below pursuant to unclean hands concerning their conduct attempting to breathe life into a hopelessly void judgment and continual attempts to enforce the void judgment and profit from it in their ongoing collection activities. The State's filings in this matter seeking relief from this Court were filed in *bad faith* with *unclean hands*. The late Mr. Steele asserted the same in his paper requesting attorney fees.

WHEREFORE, the Court should, based upon the aforementioned,

1. Find the State has proceeded in this appeal and in the Court below with unclean hands by attempting to breathe life into a hopelessly void judgment and continuing to pursue enforcement and collection activities related to the void judgment and/or
2. Enjoin the State from continuing any activities that attempt to breathe life into a void judgment, collect on the judgment or enforce the judgment and/or
3. Summarily reverse this case with instructions to grant all relief sought in the Court below and/or
4. The Court should invoke its inherent supervisory and disciplinary powers and/or
5. The Court should find the State's conduct in bad faith with unclean hands because the ruling in Huminski v. State, 2d19-1247 (Exhibit "F"), clearly holds that contempt is private to the offended court, not a court of inferior jurisdiction, and the State positions are vexatious and frivolous given well-established and overwhelming authority and/or
6. Grant any other relief the Court deems fair and just or as a sanction including the striking of the papers filed by the State in this matter. Ironically, the State couldn't bother to file a proper commencement document in State v. Huminski, but, now files volumes to protect the void judgment burdening this and the lower court worthy of the most severe of sanctions. A judgment issued in the absence of any and all jurisdiction simply can not be remedied with additional volumes of paper filed by the State.
7. Huminski requests oral argument related to this motion.

Appellant advises the Appellees to treat this paper as a motion for sanctions under F.S. § 57.105 and are given safe harbor for 21 days as an opportunity to withdraw their frivolous and vexatious papers filed in this appeal.

Declaration

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true. F.S. 92.525.

Dated at Miami, Florida this 13th day of March, 2022.

-/S/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the Appellees via the e-filing system in this case.

Dated this 13th day of March, 2022.

-/s/- Scott Huminski

Scott Huminski

Exhibit “A”

In The
Third District Court of Appeal

SCOTT HUMINSKI,	)	Number: 3d21-1920
APPELLANT ,	)	
v.	)	
STATE OF FLORIDA, ET AL,	)	
APPELLEES.	)	

AFFIDAVIT OF S. HUMINSKI #2 RE: State's forgery of court orders/unclean hands

NOW COMES, Appellant Scott Huminski ("Huminski"), and, under oath, hereby states, deposes and swears as follows:

1. The State of Florida used a forged document to commence State v. Huminski, 17-MM-815 which is the gravamen of the matter below which is a collateral attack upon a *void ab initio* judgment that was the product of the State's reliance upon a forged commencement document in State v. Huminski.
2. Huminski's Affidavit of Scott Huminski Re: State's forgery of court orders/unclean hands, filed in this matter on 2/28/2022, is a true and correct depiction of the forgeries used by the State in State v. Huminski to pursue a criminal prosecution and obtain a criminal conviction in the Lee County Court when the alleged contempt arose in Huminski v. Town of Gilbert, et al., 17-CA-421, 20th Circuit Court.
3. State criminal prosecutions such as State v. Huminski do not arise in the State of Florida from contempt in a civil matter to which the State was never a party such as Huminski v. Town of Gilbert, et al..
4. The State bullied it's way into State v. Huminski with forged charging instruments in an extreme abuse of the power of criminal prosecution.
5. In State v. Huminski, no State prosecutor authored a charging document and no commencement document exists containing the signature of a State prosecutor only a show cause order with the judicial signature "lifted" from a Circuit Court order in Huminski v. Town of Gilbert, et al..

RECEIVED, 03/07/2022 08:00:21 PM, Clerk, Third District Court of Appeal

6. In State v. Huminski, the show cause order which is the only commencement document that remotely resembles a commencement document does not list the State of Florida as a party.
7. How the State managed to get a case entitled State v. Huminski docketed remains a mystery absent the State's filing of any commencement document in the case.
8. This appeal is solely the product of Appellant's counsel failing to appear in the case subsequent to their retention on September 17, 2021 and noticed on that same day as truthfully portrayed in the docket below and the record on appeal which is the same day the granted motion (subject of this appeal) was filed by the State. Appellants counsel did file an appearance, too little too late, a few hours after the dispositive hearing (AKA Status Conference) on September 21st
9. Huminski noticed the Court again on September 20, 2021 in writing memorialized on the docket below and verbally informed the Court below at the Status Conference (sua sponte converted to a dispositive motion hearing) of the retention of counsel 4 days earlier.
10. The only response Huminski proffered to the granted motion to dismiss filed on September 17, 2021 were the verbal and written notices of retention of counsel filed and presented to the Court below detailed in the prior 2 paragraphs.
11. The State's filings in this matter (upon information and belief with unclean hands) are an attempt to breathe life into the hopelessly void judgment from State v. Huminski which was not commenced with a proper pleading filed by the State nor did any initial pleading list the State as a plaintiff.
12. The State's filings in this matter (upon information and belief with unclean hands) are an attempt to profit from ill-gotten gains related to the void judgment in State v. Huminski.
13. The State's filings in this matter (upon information and belief with unclean hands) are an attempt to cover-up the forgeries they used in State v. Huminski.

14. Upon information and belief the State's conduct before this Court related to their attempts to protect the *void ab initio* judgment in State v. Huminski is conduct that shocks the conscious and constitutes a manifest injustice.
15. On 9/21/2021 after dismissal at the status hearing, Huminski requested counsel to file for emergency relief to stop the State's continuing activities to collect on the judgment in State v. Huminski and Huminski received no response from counsel, only silence.
16. On multiple occasions since September 21, 2021, Huminski requested counsel to seek relief in this Court to place the parties in *status quo* related to the judgment in State v. Huminski to stop harassment, collection activities and prejudice from the government and received no response, only silence.
17. Huminski has not conferred once with counsel that produced a meaningful response from counsel that addressed any of Huminski's concerns.
18. All legal fees paid to counsel went to a tightly held corporation of Ronald Humphreys, Lawstaff, Inc., headquartered at the home of Mr. Humphreys quite contrary to an attorney's ethical duty to safeguard client funds.
19. Upon information and belief Mr. Humphrey's is engaging in the criminal Unauthorized Practice of Law because no licensed attorney would advise a client to attend a hearing *pro se* when a vexatious litigant issue was pending in a court proceeding.
20. Mr. Humphreys did advise me to attend the hearing of September 21, 2021 *pro se*, advice that cause the dismissal of the case below and forced this very unnecessary appeal prejudicing the administration of justice constituting UPL as this advice certainly did not come from Mr. Steele nor would it come from any licensed attorney in Florida.
21. Upon information and belief Florida attorneys do not engage in the neglect of a legal matter entrusted to them or engage in malpractice, however, non-attorney Mr. Humphreys, or his corporation that collects legal fees, Lawstaff, Inc., is not bound by any attorney ethical precepts because he is not an attorney nor is Lawstaff, Inc. that collected all legal fees in this case.

22. Huminski has requested that Attorney Steele explain why all legal fees paid in this matter went to Mr. Humphreys' corporation Lawstaff, Inc. and got no response, only silence.
23. This appeal is solely the result of UPL or neglect of a legal matter entrusted to either Mr. Humphreys or Mr. Steele and malpractice and has created a burden on this Court.
24. On this date, I once again requested Mr. Steele and Mr. Humphreys to move to strike or seek a similar sanction regarding today's State filing in this matter pursuant to unclean hands/bad faith and got no response. I also previously received no response when I asked both men to challenge the State's Answer brief under unclean hands and received no response, only silence.
25. I have never spoken to Attorney Steele and I don't know the man and don't believe an attorney-client relationship exists especially since all legal fees were paid to Mr. Humphreys' corporation.
26. I intend to file a UPL complaint concerning Mr. Humphreys and possibly an ethics complaint concerning Mr. Steele (if he indeed is counsel on this appeal), however Mr. Humphreys threatened me today via email to end my inquiries into the aforementioned issues which may be construed as obstruction of justice concerning forthcoming complaints to authorities.

Declaration

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true. F.S. 92.525

Dated at Miami, Florida this 7th day of March, 2022.

-/S/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
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(239) 300-6656

S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the State of Florida via the e-filing system in this case.

Dated this 7th day of March, 2022.

-/s/- Scott Huminski

Scott Huminski

Exhibit “B”

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815 State of Florida vs Huminski, Scott A

Previously FTA for assigned Judge
Felony Reduction Juvenile

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level \$900.04

Citation Issuing Agency OTH Court Date 03/16/2018 Court Clerk SM
BENCH

Attorney: AT Huminski, Scott A

APPEARANCE	PLEA	ADJUDICATION	VERDICT	DISPOSITION
☒ Failed to Appear	☐ Guilty	☐ Withheld by Judge	☒ Guilty by Judge	☐ Acquitted
☒ Present w/o Attorney	☒ Not Guilty	☒ Adjudicated Guilty	☐ Not Guilty by Judge	☐ Nolle Pros
☐ Present w/ Attorney	☐ Nolo Contender	☐ Withheld by Clerk	☐ Guilty by Jury	☐ No Information
☐ Present by Attorney	☐ Lesser Offense		☐ Not Guilty by Jury	☐ Dismissed
☐ Present w/ Interpreter			☐ Mistrial	☐ Adm. Dismissed
☐ Interpreter Services Requested	Degree			☐ Merge & Dismiss
☐ Language	Statute			
☐ Victim/Other				

SENTENCE

☒ Probation Reporting 6 DD/MM/YY
☐ Consecutive/Concurrent with _____
☐ One Time Cost \$ _____ Waive COS \$ _____
☒ Report to Probation Today or Upon Release Within _____
☐ Probation may terminate early when conditions are met
☐ May Transfer Probation to _____
☐ May Report to Probation and/or Instruct by Mail
☐ Ignition Interlock Device DD/MM/YY
☐ Impound Vehicle for _____ days as a condition of probation unless statutory conditions are met
☐ Statutory Exception to Vehicle Impound
☐ Does Not Own Vehicle ☐ Shared Vehicle
☐ Other _____
☐ Random _____ Alcohol _____ Drug Screenings & Urinalysis at own expense - No positive/diluted samples
☐ No Possession or Consumption of Alcohol or Illicit Substances
☐ DUI School - Follow recommendations/Phase I II
☐ School to Determine which Phase
☐ Sign up w/in _____ days
☐ Traffic School 4 Hr / 8 Hr / 12 Hr
☐ Attend and Complete Lee Memorial High Risk Driver's Course or _____ Victim Impact Panel
☐ Psychiatric Evaluation _____ Evaluate for Alcohol/Substance Abuse/Anger Mgmt and follow recommendations of...
☐ Sign up for Batterer's Intervention Program w/in 30 Days
☐ Attend & Complete _____ Anti-Theft _____ Mile Post Program
☐ Attend & Complete Program
☐ DNA Testing Collected _____ in Court _____ at LCJ
☐ Other Testing _____ HIV _____ STD _____
☐ Defendant Advised of Habitual and/or Felony Status

☒ Jail Time 45 DD/MM/YY
☐ Consecutive/Concurrent with _____
☐ Weekend Time Fri 6pm to Sun 6pm
☐ Beginning _____
☐ Day Work Program* _____ Days
☐ Minimum _____ day(s) a week _____ consecutive weeks
☐ Credit Time Served _____ DD/MM/YY
☐ Credit Time Served Applied to _____ Straight Time
☐ _____ Weekends _____ Day Work Program
☐ Defendant Remanded ☒ Sentence Suspended -45 DAYS
☐ DL Suspended/Revoked _____ DD/MM/YY
☐ Spec. Conditions - Drive for Work/Business purposes
☐ Show Valid Driver's License within _____
☐ Produced Valid Driver's License in Court
☐ Community Service _____ Hours and/or Pay \$ _____
☐ Must complete _____ hours of community service before buyout
☐ Show Proof of Com. Service to Clerk w/in _____
☐ Stay Away from arrest location _____
☐ No Contact with victim _____
☐ State Orally Amends Charge in Open Court
☐ Formal Filing of Information is Waived
☐ Information Filed in Open Court
☐ Successfully Completed Pretrial Diversion Program
☐ Judicial Warning
☐ Defendant Accepted DV Diversion
☐ Defendant to be Released ROR on this Charge Only

CONTINUANCES

Date Continued to _____
 For _____ AR _____ DS _____ TR _____ DA _____ DD _____ DT _____ RH

Time 09:00 AM / PM Court Room _____ Speedy Trial Waived _____ Speedy Trial Told _____
09:00 HAS _____ MEG _____ ZMG _____ DSG _____ JMG _____ TPP _____ ABH _____
 Report to PTS/Screen for Public Defender

Defendant/Attorney _____ Date _____

Failure to comply with any part of this order shall result in a bench warrant being issued for your arrest and/or suspension of your driver's license privilege.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Manager, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

ORDER / COMMITMENT FORM

COUNTY COURT, LEE COUNTY, FLORIDA

17-MM-000815

State of Florida vs Huminski, Scott A

Previously FTA for assigned Judge _____
Felony Reduction _____ Juvenile _____

1 CONTEMPT OF COURT CIRCUIT OR COUNTY No Charge - No Level \$900.04

Citation

Issuing Agency
OTHCourt Date
03/16/2018

Court Clerk

FINE ASSESSMENTS (statutes indicated)

☒ Fine \$ 400 (775.083)
☒ 5% Surcharge \$ 20 (938.04)

MANDATORY ASSESSMENTS

☒ Court Costs (Include Crime Stoppers & Crime Prevention)
 (318.18 / 775.083 / 938.01 / 938.03 / 938.05 / 938.06 / 938.185)

☒ \$220.00 Other \$ _____
 If Ordered Under - Reason: _____

____ \$33.00 Certain Traffic Offense Court Cost (318.17 / 318.18)
 ____ \$135.00 DUI Court Costs (938.07)
 ____ \$70.00 Reckless Driving Court Costs (318.18 / 318.182)
 ____ \$65.00 Racing Court Costs (318.18)
 ____ \$5.00 Leaving the Scene Court Costs (318.061)
 ____ \$195.00 BUI Court Costs (938.07 / 327.35)
 ____ \$201.00 Domestic Violence Trust Fund (938.08)
 ____ \$151.00 Rape Crisis Trust Fund (938.085)
 ____ \$151.00 Crimes Against Minors (938.10)
 ____ \$500.00 Civil Penalty (796.07)
 ____ \$40.00 Contested By Nonprevailing Party Fee (34.045)

DISCRETIONARY ASSESSMENTS

____ \$100.00 FDLE Trust Fund/Statewide Crime Lab (938.25)
 ____ Investigative Fee \$ _____ to _____
 to _____ FDLE _____ FMP _____ LCSO _____ Statewide Pros.
 Other _____ (938.27)
 ____ Worthless Check Diversion Fee \$ _____ (832.08)
 ____ Diversion Cost of Supervision \$ _____ (948.09)

Pay Within 5 DDMMYY

____ Upon release from In-Custody

MOTION HEARINGS

____ Revoke Bond _____ Reinstate Bond
 ____ Set/Reduce/Increase Bond to _____
 ____ Suppress _____ Dismiss _____ Continue
 ____ Expunge/Seal (All outstanding monetary obligations must be
 paid to the Clerk's office before the case is officially
 expunged/sealed.)
 ____ Withdraw Plea
 ____ Withdraw as Counsel
 ____ Modify No Contact Order _____ Lift No Contact Order
 ____ Other _____

Motion Result (Circle One): Granted Denied Reserves Ruling

____ State & Defense Stipulate to Suppress the Breath Test Results
 ____ State Amends Information from BAL of .15 or Above to .08
 ____ Clerk to Update Case w/ Defendants Information Listed

~~DEFENSE MOTION FOR MISFEASANCE DENIED. MOTION TO DISMISS DENIED. ANY FUTURE FILINGS ARE TO BE UNDER THE SIGNATURE OF A LICENSED ATTORNEY. NO COMMUNICATION WITH THE FACTS IN THE CIVIL OR CRIMINAL CASE.~~

Pre-sentence Investigation/Sentencing _____ Full/Partial

If probation has not been imposed, you must pay your financial obligation within the time allowed by the Judge or sign up for the payment plan option offered by the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.

Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245).

Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).

Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney A. K. Kuznetsov Bar No. 1000007/26999 Date _____

Judge James R Adams [Signature] Date _____

ATTORNEY FEES & SURCHARGES

☒ \$50.00 Cost of Prosecution (938.27)
☒ \$50.00 Public Def Application Fee (27.52)
 Additional Application Fees \$ _____
 (Must be addressed on the record)
☒ Defense Attorney Costs at Conviction (938.29)
 \$50.00 Other \$ _____

RESTITUTION

____ Minimum Payment of \$ _____ per Month
 to _____
 ____ As a Condition of Probation
 Restitution Ordered \$ _____ to _____

____ Restitution Reduced to Judgment
 ____ Court Orders Restitution - Reserves on Amount

DISPOSITION OF MONETARY OBLIGATIONS

☒ May Convert Fine Cost All or In Part to Community
 Service at \$10 per Hour
 ____ Defendant Advised of Notary Requirement for Community
 Service (For Non-Probationary Sentences)
 ____ Credit Time Served for Fines/Costs/Fees _____
 ____ Monetary Obligations Referred to Clerk of Court Collections
 ____ Monetary Obligations Reduced to Judgment _____ Previous Only
 ____ Monetary Obligations (VOP) _____ Carried Forward
 ____ Defendant to sign up for Payment Plan
 ____ First Payment Due within 30 Days
 ____ Waive all Additional Mandatory Costs

WARRANTS/BONDS

____ BW/D6 Ordered Balance \$ _____
 ____ Issue Bench Warrant _____ MM/DD/YYYY
 ____ Bond Estreature \$ _____
 ____ Non-Compliance/Non-Appearance \$ _____
 ____ Set Aside BW/D6 \$ _____
 ____ Set Aside Estreature \$ _____
 ____ Cash Bond to pay Fine/Cost including _____
 ____ Return Cash Bond to Depositor

____ Conflicting Appearance Date Addressed in Court

REVOCATION HEARINGS

____ Defendant Pleas Guilty/Admits Allegations
 ____ Defendant Pleas Not Guilty/Denies Allegations
 ____ Adjudicated Guilty _____ Adjudication Withheld
 ____ Probation Reinstated _____
 ____ Probation Modified _____
 ____ Same Terms and Conditions to Apply
 ____ Probation Revoked & Terminated _____ Probation Terminated
 ____ COS Fees Due & Owng in the amount \$ _____

Exhibit “C”

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 17-MM-000815 JRA

VS.

SCOTT ALAN HUMINSKI

STIPULATED MOTION TO MODIFY CONDITIONS OF PRETRIAL RELEASE

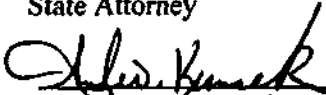
COMES NOW, the Defendant, by and through the Office of the Public Defender, and the State Attorney and jointly stipulate that the Defendant's pretrial release conditions be modified, and states the following as grounds:

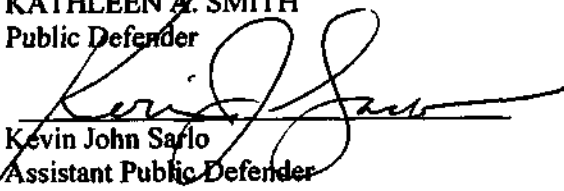
1. On June 29, 2017, Mr. Huminski was placed on pretrial supervision as part of indirect criminal contempt proceedings.
2. Mr. Huminski's conditions included (but were not limited to) no contact with the Lee County Sheriff's Office "except through their legal counsel, unless said contact is initiated by the Sheriff's Office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation." Order on Arraignment, dated July 7, 2017.
3. The Lee County Sheriff's Office provides security for the Lee County Justice Center and is the default law enforcement agency in the City of Bonita Springs, where Mr. Huminski lives.
4. Mr. Huminski's conditions should be modified so that he shall not have any contact with the Lee County Sheriff's Office except through their legal counsel unless said contact:
 - a. is initiated by the Sheriff's Office, such as if Mr. Huminski is arrested or stopped for a traffic violation;
 - b. is made in the process of attending and participating in court dates for his criminal case; or
 - c. is necessary to report a crime or other emergency normally referred to the Lee County Sheriff's Office.

DATED this 20th day of September, 2017.

STEPHEN B. RUSSELL
State Attorney

KATHLEEN A. SMITH
Public Defender


Anthony W. Kunasek
Assistant State Attorney
Florida Bar No. 0026999


Kevin John Sarlo
Assistant Public Defender
Florida Bar No. 0126369

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, P. O. Drawer 1980; to Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 dated this 22nd day of September, 2017.

Linda Doggett
Clerk of the County Court

By: 

Deputy Clerk

KS/SK

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY,
FLORIDA

STATE OF FLORIDA

CASE NO. 17-MM-000815 (JRA)

vs.

SCOTT ALAN HUMINSKI

ORDER

THIS CAUSE having come for consideration upon the Stipulation between Defense counsel and State Attorney and the Court being duly advised in the premises, it is thereupon:

ORDERED AND ADJUDGED that the Stipulated Motion to Modify Conditions of Pretrial Release is hereby:

✓ GRANTED

 DENIED

DONE AND ORDERED, this 22 day of September, 2017.

James R. Adams
James R. Adams
Judge of the County Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers, FL 33901; to the Honorable Kathleen A. Smith, Public Defender, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida; to Scott Huminski, 24544 Kingfish Street, Bonita Springs, FL 34134 dated this 22nd day of September, 2017.

Linda Doggett
Clerk of the County Court

By: J. Garcia
Deputy Clerk

Exhibit “D”

IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 17-000815MM (JRA)

vs.

SCOTT ALAN HUMINSKI

**NOTICE OF APPEARANCE; WAIVER OF ARRAIGNMENT;
WRITTEN PLEA OF NOT GUILTY; NOTICE OF DISCOVERY AND
INITIAL DISCLOSURE**

The Public Defender hereby enters this notice of appearance.

The Defendant, pursuant to Rule 3.160(a), Florida Rules of Criminal Procedure and files this Written Plea of Not Guilty to the charge(s) pending in the above-entitled cause.

The Defendant, pursuant to Fla.R.Crim.P.3.220, files written notice of said Defendant's election to participate in discovery.

The Defendant, pursuant to Fla. R. Crim. P. 3.220(d), has no disclosures or witnesses other than those that will be disclosed by the State pursuant to Fla. R. Crim. P. 3.220(b). Should the Defendant discover additional witnesses or materials subject to disclosure, the Defendant will promptly provide such to the State pursuant to Fla. R. Crim. P. 3.220(j).

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished electronically to the Anthony W. Kunasek, Assistant State Attorney, 2000 Main Street, 6th Floor, Fort Myers FL 33901; on this 20th day of September, 2017.

KATHLEEN A. SMITH
Public Defender
2000 Main Street
Fort Myers, Florida 33901


By: _____
Of Counsel - Kevin John Sarlo
Florida Bar No. 0126369
KevinS@pd.cjis20.org

Exhibit “E”

17mm815

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA**

Huminski, Scott

Plaintiff

vs

Town of Gilbert AZ et al

Defendant

Case No: 17-CA-000421

Date: June 29, 2017

Judge: Elizabeth V Krier

Deputy Clerk: Brenda Horton

Court Reporter:

MINUTES

Attorney for Plaintiff: **Kevin Sarlo**
Attorney for Defendant: **Anthony Kunasck**

☒ Present ☐ Not Present
☒ Present ☐ Not Present

Hearing Information:

SHOW CAUSE / ARRAIGNMENT PROCEEDING:

-Plea of Not Guilty Entered
-CMC scheduled on 8/15/17 at 1:00 for 10 minutes
-CMC is set to review how the State is proceeding with the case and at that
Point we can schedule future hearings. Also to be discussed transfer case
From civil to criminal
-Pretrial release without bond / Conditions: Mr. Huminski is to check in with
Pretrial officer every 2 weeks, along with the condition to not violate anymore
Orders. Only Mr. Huminski's PD or licensed attorney may contact the courts.
He must not contact the courts or Sheriff's Department by email

☐ Motion ☐ Granted ☐ Denied ☐ Reserved

Notes:

-Scott Huminski-present
-Copies of orders on file given to Mr. Huminski, Mr. Sarlo, and Mr. Kunasck
In court

*Sworn

Exhibit “F”

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327**

May 08, 2019

CASE NO.: 2D19-1247

L.T. No.: 18-AP-3,
18-AP-9

SCOTT HUMINSKI

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

The petition for writ of prohibition and in the alternative for writ of mandamus is granted. As this court concludes that it has jurisdiction over the appeal of case 17-MM-815, the Appellate Division of the Twentieth Judicial Circuit Court for Lee County shall immediately transfer the appeal of that case to this court. Although it appears that a given court must address its own contempt cases, § 38.22, Fla. Stat. (2018) ("Every court may punish contempts against it . . ." (emphasis added)), we additionally rely on the series of administrative orders issued by the Chief Judge of the Twentieth Judicial Circuit appointing all county judges as acting circuit judges, beginning with the order signed on December 2 and filed on December 5, 2016, in Book 60, Page 124 of the clerk's records, such that the disposition order in case 17-MM-815 may be considered an order of the circuit court. See also Fla. R. Jud. Admin. 2.515(b)(4); Wild v. Dozier, 672 So. 2d 16, 20 (Fla. 1996); State ex rel. Treadwell v. Hall, 274 So. 2d 537, 539 (Fla. 1973); see also § 38.22, Fla. Stat. (2018).

NORTHCUTT, VILLANTI, and KHOUZAM, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

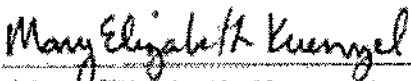
Served:

Attorney General, Tampa
Hon. Elizabeth V. Krier

Katherine Coombs Cline,
A.A.G.
Linda Doggett, Clerk

Anthony M. Candela,
Esq.

td


Mary Elizabeth Kuenzel
Clerk

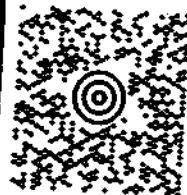




DANA HUNINSKI
(239) 360-6655
THE UPS STORE #2462
STE 602
256 PALM COAST PKWY NE
PALM COAST FL 32137-8217
SHIP US DISTRICT COURT
TO: STE 322
111 N ADAMS ST

2 LBS
1 OF 1
SHIP LIT: 2 LBS
DATE: 04 APR 2022

TALLAHASSEE FL 32301-7730



FL 323 0-01



UPS GROUND

TRACKING #: 1Z 1A0 F88 03 2429 7577



BILLING: P/P

BM4

66 of 66

U.S. District Court
111 N. ADAMS ST
Suite 322
Tallahassee FL
32301-7730

spR

ppG9r

In The
United States District Court
Northern District of Florida

EQUALITY FLORIDA, ET AL,

)

Number: 4:22-cv-00134-AW-MJF

PLAINTIFFS,

)

v.

)

RONALD DESANTIS, ET AL,

)

DEFENDANTS.

)

Clarification of Motion for Temporary Restraining Order

NOW COMES, Scott Huminski ("Huminski"), and clarifies the relief sought in the pending Motion for Temporary Restraining Order as follows:

Additional Requested Relief:

Enjoin any arrest or enforcement activities by the State of Florida concerning the Lee County Court order mandating the lifetime prohibition of all communication with the State of Florida government by Huminski entered in State v. Huminski, 17-mm-815, Lee County Court, to wit:

"No communication with the parties in the civil or criminal case",

When to Update Case w/ Defendants Information Listed: US Fees Due & Owed in the amount \$
DEFENSE MOTION FOR MISFEASANCE DENIED MOTION TO DISMISS DENIED ANY FUTURE FILINGS ARE
TO BE WITHIN THE SIGNATURE OF A LICENSED ATTORNEY IN THE CIVIL OR CRIMINAL CASE NO COMMUNICATION WITH THE FACTS
Pre-Sentence Investigation/Sentencing Full/Partial
If probation has not been imposed, you must pay your financial obligations within the time specified.

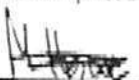
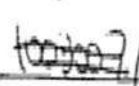
Simply service of court papers in the instant matter constitutes a communication with the State of Florida, a violation of the court order which mandates the sanctions set forth in the order under F.S. 322.425 including arrest which Huminski endured once whereby he was held without bail related to this court order for nearly a month. The State of Florida is dead serious concerning this threat.

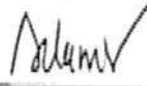
the Clerk of Court. If sentenced to Probation, you must adhere to standards as directed.

Failure to comply with any part of this order may result in a suspension of your driver license privilege and/or warrant being issued for your arrest (322.245).

Unpaid financial obligations still remaining 90 days after payment due date will be referred by the Clerk of Court to a collection agency and an additional fee of up to 40% of the outstanding balance owed will be added at that time (28.246).

Mandatory assessments are imposed and shall be included in the judgment without regard to whether the assessment was announced in open court.

Asst. State Attorney  A. Kuzay Bar No.  26999 Date _____

Judge James R. Adams  Date _____

Rev. 05/05/2017

Obviously, service of this paper requires the sanctions and punishments mentioned in the order.

Dated at Miami, Florida this 4th day of April, 2022.

-/s/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_Huminski@live.com



Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the U.S. Mails and/or email and/or the e-filing system in this case.

Dated this 4th day of April, 2022.

-/s/- Scott Huminski

Scott Huminski





USPS TRACKING® NUMBER

Case 4:22-cv-00134-AW-MJF Document 21 Filed 04/08/22 Page 5 of 8



ORLANDO FL 328

5 APR 2022 PM 4 L

9516 4066 9811 2094 4950 49



U.S. POSTAGE

\$2.45

FCM LETTER

32137 0029

Date of sale

04/04/22

06 25

11487516

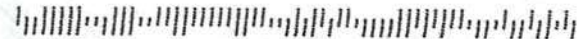


APR

US, District Ct
111 W. Adams St
#322
Tallahassee FL

32301-7730

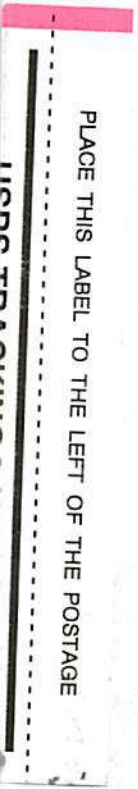
32301-773097



Huminski
PO Box 353820



PLACE THIS LABEL TO THE LEFT OF THE POSTAGE



USPS TRACKING

DEVIN ERIC LAMM- D.O.C. # 168538
WAKULLA CORRECTIONAL INSTITUTION
110 MELALUECA DRIVE
CRAWFORDVILLE, FL 32327
4:22-cv-00008-MW-MAF ECF 8 & 9

TALLAHASSEE FL 323
30 MAR 2022PM 3 L



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
OFFICE OF THE CLERK
111 NORTH ADAMS STREET, SUITE 322
TALLAHASSEE, FLORIDA 32301-7717
OFFICIAL BUSINESS

Swannee

FILED USDC FLND TL
APR 7 '22 PM3:29



U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

6

Notice of Removal was filed in both Federal Court and the Florida 20th Circuit on 6/26/2017 pursuant to Bankruptcy Rule 9027.

4. Once the State of Florida was confronted with the removal to federal court, it chose to simply forge a Court order by taking an order issued in the 20th Circuit on 6/5/2017, modifying it and then filing it in the Lee County Court initiating State v. Huminski, on 6/30/2017 (4 days after removal) as a criminal statutory misdemeanor case despite the lack of existence of a criminal statute allowing such a criminal prosecution and the loss of any and all jurisdiction to the federal courts regarding contempt. This manufactured order contained a lifted judicial signature from a 6/5/2017 Circuit Court order without a new judicial signature and without a signature from any State prosecutorial authority. Upon information and belief, the forged court order was manufactured in the dark recesses of the Lee County Court complex in Fort Myers, Florida to evade jurisdiction of the federal courts and terrorizing Huminski was the only purpose of the State's illegal tactics involving forgery of a court order to initiate State v. Huminski when the matter was already pending in the federal courts. Duplicitious litigation is vexatious, frivolous, a vast abuse of the power of criminal prosecution, conduct prejudicial to the administration of justice, abuses judicial economy and burdens the State criminal justice system with matters being determined by the federal courts.
5. Huminski was placed on pre-trial criminal supervision by the County Court in State v. Huminski and his conditions of pre-trial release included no communication with local law enforcement with regard to reporting crime or any other speech.
6. Attached hereto as Exhibit "A" is a true and correct copy of the Notice of Removal as filed in both State and Federal Courts removing the 20th Circuit civil case and alleged contempt therein to the United States District Court (Bankruptcy Unit) with the Circuit Court filing stamp in the header and the filing stamp of the Bankruptcy Court thereon.

7. Florida State Courts have routinely denied the fully disabled Huminski his requests for ADA accommodations with regard to State v. Huminski and matters collaterally attacking State v. Huminski in the Florida 11th Judicial Circuit and the Florida Third District Court of Appeal. The one word orders denying ADA accommodations in Florida State courts, "DENIED", are abundant.
8. Upon information and belief, the State of Florida operates with a complete and utter disobedience and disdain concerning federal laws with regard to the Bill of Rights and the Supremacy Clause as pled by the Plaintiffs in this matter including the herein described violations of Title 11 and the Americans with Disabilities Act. Huminski believes the State of Florida is morally bankrupt concerning its disdain for federal law and the U.S. Constitution.
9. Concerning the hearing and trial of contempt in Florida which is private to the allegedly offended Court, when it comes to silencing core protected political expression such as Huminski's, the State of Florida refuses to abide by the case law authority set forth by Florida appellate courts related to the proper venue to hear contempt. See generally, South Dade Farms v. Peters, 88 So. 2D 891 (Florida Supreme Court 1956) (approvingly citing "*There has been general recognition of the fact that the courts are clothed with this power, and must be authorized to exercise it without referring the issues of fact or law to another tribunal or to a jury in the same tribunal. ... Bessette v. W.B. Conkey Co.*, 194 U.S. 324 337, 24 S.Ct. 665, 48 L.Ed. [997] 1005.") and Huminski v. State, 2d19-1247 (Fl 2nd DCA, 2019)(adding emphasis to the statutory language "against it" concerning F.S. § 38.22). Trial of Circuit Court contempt in a County Court is prohibited and absent jurisdiction and statutory authority.
10. Upon information and belief, the State of Florida's contempt for the powers, authority and jurisdiction of the federal courts is extreme and obvious because of their failure to

acknowledge a removal of a State case to the federal courts as set forth herein evidenced by the State's willingness to engage in a criminal prosecution in the absence of any and all jurisdiction – a fundamental Due Process violation.

11. Upon information and belief The Supremacy Clause of the Constitution of the United States establishes that the Constitution, federal laws, and treaties, constitute the "supreme Law of the Land", apparently except in the State of Florida.

12. Below is a true and correct docket excerpt from the U.S. Bankruptcy Court memorializing the removal of Huminski v. Gilbert, 17-CA-421, 20th Circuit Court, and the contempt allegations therein on 6/26/2017 to the federal courts prior to the existence of State v. Huminski, Lee County Court,

9:17-bk-03658-FMD Scott	Alan	Huminski
Case	type: bk Chapter: 7 Asset: No Vol: v Judge: Caryl	E Delano
Date filed: 04/28/2017 Date of last filing: 06/03/2017		

Associated Cases

Case	Associated Case	Type
9:17-bk-03658-FMD Scott Alan Huminski	9:17-ap-00509-FMD Huminski v. Town of Gilbert, AZ et al	Adversary

Other Filings by Same Debtor(s)

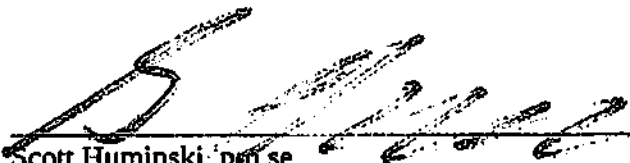
There Are No Case Filing Associations For This Case

U.S.	Bankruptcy	Court
Middle District of Florida (Fl.		Myers)
Adversary Proceeding #: 9:17-ap-00509-FMD		

Assigned to: Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski

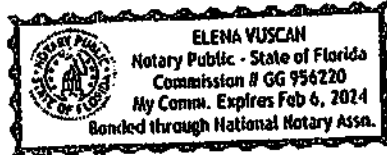
Date Filed: 06/26/17
Date Removed From State: 06/26/17

Dated at Flagler County, Florida this 19th day of April, 2022.



Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_Huminski@live.com

Sworn and Subscribed to before me this 19th day of April, 2022 in Flagler County, Florida,





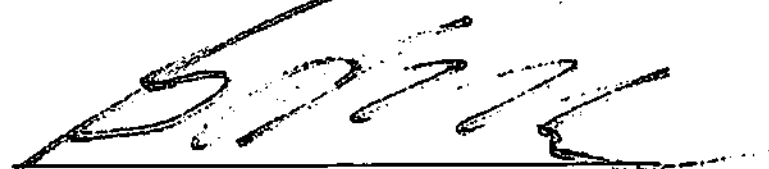
NOTARY

Feb 6, 2024
EXP.

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the U.S. Mails and/or email and/or the e-filing system in this case on this day.

Dated this 19th day of April, 2022.

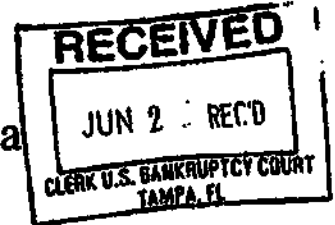


Scott Huminski

Exhibit “A”

Filing # 58273401 E-Filed 06/26/2017 05:02:06 PM

In The
United States Bankruptcy Court
For the Middle District of Florida



IN RE,)
SCOTT ALAN HUMINSKI,) CASE No.17-03658-9D7
DEBTOR)
) ADV. PROC. No.
)

NOTICE OF REMOVAL TO U.S. BANKRUPTCY COURT
and
PROSECUTION OF VIOLATIONS OF THE 11 U.S. Code § 362 –
AUTOMATIC STAY

NOW COMES, Debtor, Scott Huminski ("Huminski"), notices of the removal of Huminski v. Town of Gilbert, et al., 17CA421, 20th Judicial Circuit, Lee County, Florida.

Huminski also seeks to prosecute three violations of the automatic stay by one of the defendants in the removed case, Sheriff Mike Scott and his agency. Defendants and the Court below have ignored the automatic stay and, in hearing, the Judge below stated that she can ignore bankruptcies (paraphrase).

Huminski filed for bankruptcy on 4/28/2017. Meeting of creditors was held on 6/13/2017.

The State proceeding may be removed to this Court pursuant to 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has original jurisdiction over all civil proceedings "arising under title 11, or arising in or related to cases under Title 11." 28 U.S.C. § 1334(b). The State suit was the catalyst that caused the filing of bankruptcy. Filed herewith are two motions requesting relief against a defendant in the removed matter for violation of the automatic stay. 11 U.S.C. § 362

Rcvd
FILED USA, FLND 11
APR 22 '22 PM 1:53
SJB

The removed proceeding is related to the Debtor's Bankruptcy Case within the meaning of 28 U.S.C. § 1334 and it was essentially the sole motivation for bankruptcy.

The removed proceeding is a civil action within the meaning of 28 U.S.C. § 1452 because: a) the proceeding is a private party dispute between the Defendants and the Debtor in which the Plaintiff and Defendants seeks money and injunctive relief; and b) the Proceeding is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power.

Based on the foregoing, removal to this Court pursuant to 28 U.S.C. § 1452 is proper.

This Notice of Removal is timely pursuant to F.R.B.P. 9027 because the Debtor filed this Notice of Removal with this Court within ninety (90) days of entry of the order for relief under the Bankruptcy Code and within ninety (90) days of the Petition Date because the commencement of a voluntary Chapter 7 proceeding constitutes an order for relief. 11 U.S.C. § 301(b).

Upon removal, the Proceeding is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O). Moreover, because the Proceeding asserts a claim against the Debtor, it necessarily implicates the bankruptcy claims allowance process and is therefore constitutionally as well as statutorily "core" within the Supreme Court's recent ruling in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Further removal is proper: (a) under 28 U.S.C. § 1452, because the Action arises under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., (the "Bankruptcy Code"), and relates to a case under the Bankruptcy Code, as contemplated by 28 U.S.C. § 1334(b); (b) under 28 U.S.C. § 1441(b), because the case arises under federal law, as contemplated by 28 U.S.C. § 1331.

In addition, removal of this Action is proper under 28 U.S.C. § 1441(b) because this Court has federal question jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331. Debtor has alleged a violation of his human rights in treaties the U.S. is a party to and under the supremacy clause such treaties become "law of the land" and Debtor seeks relief for violations of 11 U.S.C. § 362, the automatic stay.

Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person or subject matter; (2) arguments that venue is improper; (3) insufficiency of process; (4) failure to state a claim; (5)

and any other pertinent defense available under applicable state or federal law, or otherwise, which rights are expressly reserved.

Further, nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights and protections under the automatic stay provided pursuant to § 362 of the Bankruptcy Code and any other provision of the Bankruptcy Code, which rights and protections are expressly reserved.

Notice of this filing is being served upon defendants and will be filed in the State Court as soon as possible. When service is complete, Debtor will file a certificate of service.

WHEREFORE the Debtor hereby removes the aforementioned State Proceeding, Huminski v. Town of Gilbert, et al. to the United States Bankruptcy Court for the Middle District of Florida pursuant to 28 U.S.C. §§ 1441, 1452 and F.R.B.P. 9027.

Dated at Bonita Springs, Florida this 25th day of June, 2017.

-/s/- Scott Huminski



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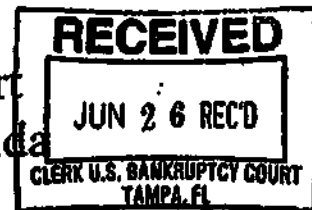
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In The
United States Bankruptcy Court
For the Middle District of Florida



IN RE,)
SCOTT ALAN HUMINSKI,) CASE No.17-03658-9D7
DEBTOR)
) ADV. PROC. No.
)

**MOTION TO VACATE PROTECTIVE ORDRS AS VOID AB INITIO OR
VOID AND FOR DECLARATORY RELIEF**

NOW COMES, Debtor, Scott Huminski ("Huminski"), moves to vacate the protective order concerning Sheriff Mike Scott and the protective order prohibiting filing the Notice of Removal as unconstitutional and for a declaration that the protective orders issued in the Court below are unconstitutionally vague/over-broad, undermine federal bankruptcy law, are not narrowly tailored and contain unconstitutional time, place and manner restrictions on core protected speech as follows:

1. Debtor is required to file his notice of removal in the State Court under F.R.B.P. 9027 (c) which states in pertinent part,

"Filing in Non-Bankruptcy Court. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded"

2. The protective order issued in the State Court obstructs Huminski's duty under 9027 and was issued after Debtor informed the State Court his bankruptcy was looming at hearing in April 2017. The State Court knows removal to bankruptcy court involves filing the notice in the State Court, thus, the State Court chose to foil bankruptcy law and obstruct justice with a prior restraint targeting removal to U.S. Bankruptcy Court and bankruptcy proceedings.

3. The protective order in the State Court states in pertinent part,

"... Huminski was specifically ordered not to file any additional documents or materials of any nature with the Court unless the filing was signed by an attorney ..."

4. No attorney is involved in IN RE Scott Alan Huminski, Huminski's bankruptcy.

5. The State Court knew that Huminski was indigent and could banish him from the courthouse and obstruct any bankruptcy matter by requiring he hire an attorney on his meager Social Security income. Mission accomplished – obstruction of justice. Which caused the delay of this filing until 4/26/2017 when Huminski had to weigh the contempt of state court versus the procedures of the bankruptcy court. Huminski opted to obey the constitution and federal law instead of the illegal protective orders. This conflict between State and Federal Courts is a product of a patently unconstitutional state court orders. No person should face contempt forth obeying the rules of the bankruptcy court.

6. At hearing, the State Court opined that the bankruptcy court did not have to be obeyed by State courts. the Court Below was subject to *ex parte* contacts which were revealed when the State Court opined at hearing that the sworn description in the Complaint Para. 2 was false despite it is unopposed on the record. The *ex parte* contact created an improper animus and bias in the State Court.

7. The State Court also forbade service of bankruptcy court papers upon Sheriff Mike Scott as follows:

"[i]n the Order on Defendant Mike Scott's Motion to Dismiss and Motion for Protective Order, SCOTT HUMINSKI was specifically prohibited from directly contacting, communicating with or otherwise serving materials directly on Sheriff Scott, his agents and employees Scott ..."

8. No attorney has appeared for Sheriff Scott in this adversary proceeding, as such, the State Court order concerning Sheriff Scott is wildly over-broad in violation of the First Amendment/Due Process and obstructs justice concerning service of papers related to this adversary proceeding upon Sheriff Scott. *Per se* obstruction of justice of matters pending before the United States Courts.

9. The prohibition of contact by Debtor with the only local law enforcement agency having jurisdiction in his town prohibiting reporting crime to the LCSO is for a lifetime, patently unconstitutional, over-broad and draconian concerning duration. Should deputies ask Huminski about a potential crime, Huminski is forbidden to talk to them. Another indication of the patently over-broad nature of the protective orders.

10. The order has not only theoretically obstructed justice, it has obstructed Huminski's ability to comply with F.R.B.P. 9027 (c) violating the First Amendment, Due Process. Huminski contacts with the sheriff reported a campaign of terrorist death threats issued to Huminski via the U.S. Mails and were sometimes critical of the Sheriff for ignoring and thus

supporting the crimes targeting Huminski – core protected political speech critical of a elected government actor. The order is against public policy as it denies Huminski access to public safety personnel and forbids Huminski's contact with an elected official and prohibits criticism of a politician.

11. Huminski emailed the judicial assistant for the State Court judge on 6/14/2017 noting the problem with the order obstructing bankruptcy matters. No response was received.

12. A similar banishment from a courthouse is documented at *Huminski v. Corsones*, 396 F.3d 53 (2nd Cir. 2005) although that case did not go to the extremes of constitutional deprivation depicted in the instant matter in violation of the First Amendment, Due Process and the Supremacy Clause. No party should have to risk contempt and imprisonment for merely obeying federal court rules as Huminski was forced to here.

13. All Huminski's communications with the defendant Sheriff were in furtherance of Huminski's report of a two year assassination plot which were met with the extremes of obstructing justice by usurping and rendering federal bankruptcy court rules void with vague and over-broad unconstitutional judicial threats.

MEMORANDUM OF LAW

The Supreme Court strongly protects "core political speech" as a "value that occupies the highest, most protected position" in the hierarchy of constitutionally-protected speech. *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 422 (1992) (Stevens, J., concurring). See also *Burson v. Freeman*, 504 U.S. 191, 217 (1992). In defining the core political speech worthy of this elevated level of protection, the Court has broadly included "interactive communication concerning political change.", the essence of Huminski's communications with the sheriff. *Meyer v. Grant*, 486 U.S. 414, 422 (1988).

Political speech gets higher protection because it is an essential part of the democratic process. Indeed, evaluating a statute that would have restricted all anonymous leafleting in opposition to a proposed tax, the Supreme Court reflected on the importance of specifically protecting such political speech which applies equally here to Huminski's speech regarding corruption and oppression by police and government actors who support the death threats received by Huminski. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *McIntyre v. Ohio Elections*

Comm'n, 514 U.S. 334, 346-47 (1995), quoting Roth v. United States, 354 U.S. 476, 484 (1957)

Recently, the Supreme Court made it abundantly clear that laws or in this case a court order that burden political speech are subject to strict scrutiny review. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010), invalidated a federal statute that barred certain independent corporate expenditures for electioneering communications. Highlighting the primacy of political speech, the Court noted that "political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are 'subject to strict scrutiny,' which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" Citizens United, 558 U.S. at 340 (quoting Federal Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 464 (2007)). There exists no compelling reason to silence Huminski's reporting of crime or criticism of the sheriff.

The order and the threats from the Court under State/Common Law cut off the "unfettered interchange of ideas" in an important place for individual political expression—the Courts. McIntyre, 514 U.S. at 346-47.

Treading upon core First Amendment expression must be accomplished in as minimally a restrictive manner as possible, and should never be done so in the form of an absolute bar on all political expression as is the case at Bar whereby civil/bankruptcy litigation has been viewed as a *per se* criminal activity by the State Court. See Bd. of Airport Comm'rs of City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (invalidating a statute because it "reache[d] the universe of expressive activity, and, by prohibiting all protected expression, purport[ed] to create a virtual 'First Amendment Free Zone.' ") (emphasis in original). Validating a sweeping ban on core political speech would seriously undermine the Supreme Court's stated goal of safeguarding the democratic process.

The contact with the Sheriff made by the Debtor were related to reporting crime and criticism of a political figure. A constitutional solution should have been to direct the sheriff to delete any emails he considered junk mail. Shutting down Huminski's reporting crime to law enforcement is an extreme remedy that does not survive constitutional scrutiny under vagueness and over-breadth precepts.

Grayned v. The City of Rockford, 408 U.S. 104 (1972) summarized the time, place, manner concept: "The crucial question is whether the manner of expression

is basically incompatible with the normal activity of a particular place at a particular time." Time, place, and manner restrictions must withstand intermediate scrutiny. Note that any regulations that would force speakers to change how or what they say do not fall into this category (so the government cannot restrict one medium even if it leaves open another) *Ward v. Rock Against Racism*(1989) held that time, place, or manner restrictions must:

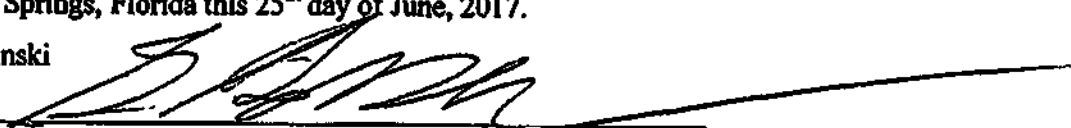
- Be content neutral
- Be narrowly tailored
- Serve a significant governmental interest
- Leave open ample alternative channels for communication

If the government tries to restrain speech before it is spoken, as opposed to punishing it afterward, it must be able to show that punishment after the fact is not a sufficient remedy, and show that allowing the speech would "surely result in direct, immediate, and irreparable damage to our Nation and its people" (*New York Times Co. v. United States*). U.S. courts have not permitted most prior restraints since the case of *Near v. Minnesota* in 1931.

Reporting crime to a local agency is not a crime or contempt, however, obstruction of service of bankruptcy court papers and compliance with Bankruptcy rules is *per se* criminal. Orders of the State Court have obstructed service of bankruptcy related papers upon the sheriff and were an attempt to obstruct Bankruptcy Rules.

Dated at Bonita Springs, Florida this 25th day of June, 2017.

-/s/- Scott Huminski



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In The
United States Bankruptcy Court
For the Middle District of Florida



IN RE,)
SCOTT ALAN HUMINSKI,) CASE No.17-03658-9D7
DEBTOR)
) ADV. PROC. No.
)

**MOTION TO VACATE STATE ORDERS – EX PARTE
COMMUNICATIONS – Judge Krier will be called as a witness**

NOW COMES, Debtor, Scott Huminski ("Huminski"), and moves to vacate all orders of the State Court because they are products of *ex parte* communications as follows:

1. Huminski received a series of death threats via the U.S. Mails beginning in May of 2015 with the series of letters continuing to June 2017. See Complaint and attachments.
2. The record in the State court contains no information from any other party concerning the death threats. The record concerning the death threats is solely from Huminski with references to the stamped and postmarked envelopes used to mail the death threats. The most recent letter was sent certified and insured from Scottsdale AZ and the mailer was caught on post office surveillance.
3. At hearing in April 2017, the State Judge declared that the death threats do not exist.
4. Notice is given that Judge Krier will be called as a witness.

The stating that the death threats do not exist can only be a product of *ex parte* communications or, less likely, judicial disability or judicial lies or bias. The judge appeared irate and hostile at the hearing. Huminski's Due Process rights were violated because of the aforementioned.

Dated at Bonita Springs, Florida this 25th day of June, 2017.

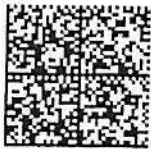
-/s/- Scott Huminski

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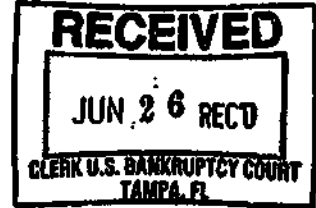
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In The
United States Bankruptcy Court
For the Middle District of Florida



IN RE,)
SCOTT ALAN HUMINSKI,) CASE No.17-03658-FMD
DEBTOR)
) ADV. PROC. No.
)

**MOTION TO SHOW CAUSE AS TO WHY SHERIFF MIKE SCOTT
SHOULD NOT BE HELD IN VIOLATION OF THE 11 U.S. Code § 362 and
MOTION FOR PROTECTIVE ORDER ENJOINING CONTACT WITH
DEBTOR ARISING FROM ANY CIVIL CASE BY SHERIFF MIKE SCOTT
HIS AGENTS OR EMPLOYEES**

NOW COMES, Plaintiff, Scott Huminski ("Huminski"), and moves as set forth above as follows:

1. Sheriff Mike Scott was alerted to the filing of this Bankruptcy on 4/29/2017 via emails sent to himself and his staff and was alerted by U.S. Mail, as a creditor, by the Court.
2. Despite the automatic stay enjoining the Sheriff's contact related to civil case Huminski v. Town of Gilbert, AZ, et al, the sheriff persists in attempts to serve various papers related to the civil suit upon Scott Huminski, a service attempt by the sheriff was made in the morning of 5/2/2017.

Dated at Bonita Springs, Florida this 25th day of June, 2017 .

/s/- Scott Huminski

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

EQUALITY FLORIDA; FAMILY
EQUALITY; M.A., by and through
his parent AMBER ARMSTRONG;
ZANDER MORICZ; LINDSAY
MCCLELLAND, in her personal
capacity and as next friend and
parent of JANE DOE; RABBI AMY
MORRISON and DR. CECILE
HOURY; DAN and BRENT
VANTICE; LOURDES CASARES
and KIMBERLY FEINBERG;
LINDSEY BINGHAM SHOOK; and
ANITA HATCHER POWDERLY,

Plaintiffs,

v.

RONALD D. DESANTIS, in his
official capacity as Governor of
Florida; FLORIDA STATE BOARD
OF EDUCATION; THOMAS R.
GRADY, BEN GIBSON,
MONESIA BROWN, ESTHER
BYRD, GRAZIE P. CHRISTIE,
RYAN PETTY, and JOE YORK, in
their official capacities as members
of the Board of Education;
RICHARD CORCORAN, in his
official capacity as Commissioner of
Education of Florida; FLORIDA
DEPARTMENT OF EDUCATION;
SCHOOL BOARD OF MANATEE
COUNTY; SCHOOL BOARD OF
SARASOTA COUNTY; SCHOOL
BOARD OF MIAMI-DADE
COUNTY; ST. JOHNS COUNTY

Civil Action No. 4:22-cv-0134-
AW-MJF

SCHOOL BOARD; and JACKSON COUNTY SCHOOL BOARD; Defendants.
--

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' CONSOLIDATED
MOTION TO EXTEND RULE 26(F) DEADLINE**

Defendants devote nine pages to opposing Plaintiffs' motion for a litigation schedule, but never propose one of their own (despite the Court's express invitation in its most recent order that the parties do so) and never explain why the Court should not adopt a schedule that coordinates Defendants' anticipated motion to dismiss with Plaintiffs' anticipated preliminary injunction motion. Instead, Defendants admit that they are unwilling to engage on any scheduling question apart from filing their own motion to dismiss (and requesting an extension of the Rule 26(f) deadline), apparently so confident in their motion that they see no point to even first discussing a schedule until three weeks after Plaintiffs file their amended complaint. That confidence is misplaced—and so is their assertion that it is somehow improper for Plaintiffs to seek a comprehensive schedule in this case. The Court should deny Defendants' motion and establish a litigation schedule.

First, Defendants never actually deny that it would make sense (and achieve significant efficiencies) to coordinate the briefing on their motions to dismiss and Plaintiffs' preliminary injunction motion. Given the substantial overlap between the

issues to be addressed, as well as the likelihood of amicus practice, it should be in everybody's interests to agree on a consolidated schedule for those motions.

Second, Defendants have never in fact “conferred” on a schedule. Opp. at 2. They have refused to discuss a coordinated litigation schedule at all. To this day, they attack Plaintiffs’ proposal without identifying any counterproposal they have ever made and without making one. Moreover, Defendants are candid about their thinking: they believe that the Court should entertain their motion to dismiss without even considering Plaintiffs’ forthcoming preliminary injunction motion. Based on that belief, they see no need to seriously discuss anything else. But Defendants’ bountiful self-confidence offers no legitimate reason for the Court to decline to establish a litigation schedule. Nor is it an excuse for Defendants’ blatant refusal to even discuss a schedule that would properly organize the filings in this case.

Third, Defendants are simply wrong to characterize Plaintiffs’ motion as a request for expedited merits discovery. The only reason Plaintiffs raised the issue of discovery is that they intend to rely on fact and expert testimony in support of their preliminary injunction motion—and it would make no sense for the parties to submit full briefing on preliminary injunction motions, complete with numerous fact and expert witnesses, and only then for the parties to first consider potential requests for depositions or other discovery. If Defendants will agree to waive any right to such discovery at the preliminary injunction stage, so be it. But otherwise, it is responsible

and appropriate (and entirely commonplace) for the parties to account for potential depositions in structuring these proceedings. That is why Plaintiffs have proposed a highly expedited period of discovery confined solely to the evidence that will be submitted to the Court in connection with preliminary injunction practice. And in response, Defendants do not ever deny that they may seek such discovery—instead, they seek to obfuscate the issue by complaining generally about expedited discovery and insisting that no decisions should be reached for at least another month (and apparently until after the preliminary injunction briefing is well underway).

To be clear, Defendants are mistaken in suggesting that Plaintiffs’ proposal is unusual. As confirmed by the cases that Plaintiffs cited in their original motion, it is commonplace for parties to undertake limited discovery in specific contemplation of a forthcoming preliminary injunction motion. The Advisory Committee Notes to Rule 26(d) specifically note that discovery before the Rule 26(f) conference “will be appropriate in some cases, such as those involving requests for a preliminary injunction” And Florida federal courts have made the same point: “Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings . . . where it would better enable the court to judge the parties’ interests and respective chances for success on the merits at a preliminary injunction hearing.” *Marketran, LLC v. Brooklyn Water Enters., Inc.*, 2016 WL 8678547, at *1 (S.D. Fla. Aug. 5, 2016) (citation and

quotation marks omitted) (granting expedited discovery prior to preliminary injunction hearing).

Many other courts nationwide have followed the same reasoning. *See, e.g., Water Tree Ventures, LLC v. Giles*, 2018 WL 7361405, at *1 (N.D. Fla. Aug. 7, 2018) (finding good cause to grant discovery concerning “matters relevant” to the potential preliminary injunction in order to forestall unlawful action); *see also Wedge Water LLC v. Ocean Spray Cranberries, Inc.*, 2021 WL 2138519, at *2 (S.D. Cal. May 26, 2021) (authorizing discovery to permit a party to determine *whether* to file a preliminary injunction where moving party produces “concrete evidence of a potential harm” and “establishes the need to preserve the status quo”); *Oglala Sioux Tribe v. Van Hunnik*, 298 F.R.D. 453, 456 (D.S.D. 2014) (granting discovery request for the purpose of “prepar[ing] a motion for a preliminary injunction”); *Apple, Inc. v. Samsung Electronics Co., Ltd.*, 2011 WL 1938154, at *2 (N.D. Cal. May 18, 2011) (granting discovery absent a pending motion for preliminary injunction because plaintiff sought to prevent irreparable harm); *Wachovia Securities, L.L.C. v. Stanton*, 571 F. Supp. 2d 1014, 1050 (N.D. Iowa 2008) (pre-motion discovery appropriate where it would “clarify matters” and may “ultimately lead to the prompt and efficient disposition of this litigation and the parties’ underlying dispute”); *Charles Schwab & Co., Inc. v. Portfolio, LLC*, 2008 WL 11322135, at *2 (D.N.M. June 26, 2008); *Ellsworth Associates, Inc. v. U.S.*, 917 F. Supp. 841, 844 (D.D.C. 1996) (finding

discovery “particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings” and that “courts have routinely granted expedited discovery in cases involving challenges to constitutionality of government action”); *Edudata Corp. v. Sci. Computers, Inc.*, 599 F. Supp. 1084, 1088 (D. Minn. 1984) (granting discovery where it would “better enable the court to judge the parties’ interests and respective chances for success on the merits”), *rev’d in part on other grounds*, 746 F.2d 429 (8th Cir. 1985).¹

Finally, Defendants assert that Plaintiffs’ motion for a preliminary injunction (which has not yet been filed) should be denied or treated less seriously because Plaintiffs have decided to amend their complaint and to propose a schedule. Opp. at 3 (citing *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016)). Defendants are mistaken twice over. It is black-letter law that the parties have an obligation to “work cooperatively in controlling the expense and time demands of litigation” and “to work together, and with the court, to achieve prompt and efficient resolutions of disputes.” Fed. R. Civ. P. 1. Moreover, this case—unlike *Wreal*—concerns a challenge to a law that has *not yet* gone into effect (that occurs on July 1, 2022) and that will impose concrete constitutional harms properly addressed through a preliminary injunction proceeding. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373

¹ Defendants’ cases concerning “expedited discovery” are not to the contrary as none involved the question whether to conduct discovery before a preliminary injunction.

(1976); *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983). Plaintiffs’ diligence in establishing a proper evidentiary record for their preliminary injunction request—and their efforts to coordinate with Defendants—reflect efforts to ensure a reasoned and orderly process rather than one in which Defendants refuse to commit to any positions on scheduling so that they can later seek to stall and confuse the litigation.

To be clear, if Defendants do not believe any discovery should be taken with respect to Plaintiffs’ preliminary injunction motion, then Plaintiffs are ready to propose a schedule that removes the discovery period and condenses the remaining deadlines. But Defendants should not be heard to complain about supposed requests to “expedite” discovery even as they refuse to commit to any positions and ask the Court to order that the parties need not even discuss anything until June 15, 2022.

Dated: May 10, 2022

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

Case No. 4:22-cv-134-AW-MJF

RONALD DESANTIS, et al.,

Defendants.

_____ /

ORDER DENYING MOTION TO INTERVENE

Scott Huminski has filed a pro se motion to intervene, ECF No. 17, which this order denies.

Huminski has not shown he is entitled to intervention as of right because he has shown no “direct, substantial, legally protectable interest in the proceeding.” *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (cleaned up). He does not seek to challenge the law Plaintiffs challenge; he seeks only to address unrelated complaints about what he views as the State’s unfair treatment of him, including through his criminal cases.

Huminski has not shown any basis for permissive intervention either. He has not shown that his claim “and the main action have a question of law or fact in common.” *Id.* And even if the court had discretion to allow his intervention, I would not do so. A pro se plaintiff’s assertion of unrelated claims would only complicate

and delay this proceeding. Huminski's motion for a temporary restraining order against the State of Florida (a nonparty) only illustrates this point.

The motion to intervene (ECF No. 17) is DENIED. The motion for a Temporary Restraining Order, ECF No. 17-1, and the "Clarification of a Motion for Temporary Restraining Order," ECF No. 21, are STRICKEN as improperly filed.

SO ORDERED on May 23, 2022.

s/ Allen Winsor
United States District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

EQUALITY FLORIDA; FAMILY
EQUALITY; M.A., by and through
his parent AMBER ARMSTRONG;
S.S., by and through her parents,
IVONNE SCHULMAN and CARL
SCHULMAN; ZANDER MORICZ;
LINDSAY MCCLELLAND, in her
personal capacity and as next friend
and parent of JANE DOE; RABBI
AMY MORRISON and CECILE
HOURLY; DAN and BRENT
VANTICE; LOURDES CASARES
and KIMBERLY FEINBERG;
LINDSEY BINGHAM SHOOK;
ANH VOLMER; SCOTT BERG;
and MYNDEE WASHINGTON,

Plaintiffs,

v.

RONALD D. DESANTIS, in his
official capacity as Governor of
Florida; FLORIDA STATE BOARD
OF EDUCATION; THOMAS R.
GRADY, BEN GIBSON,
MONESIA BROWN, ESTHER
BYRD, GRAZIE P. CHRISTIE,
RYAN PETTY, and JOE YORK, in
their official capacities as members
of the Board of Education; JACOB
OLIVA, in his official capacity as
Commissioner of Education of
Florida; FLORIDA DEPARTMENT
OF EDUCATION; BROWARD
SCHOOL BOARD; SCHOOL
BOARD OF MANATEE COUNTY;

Civil Action No. 4:22-cv-00134
(AW) (MJF)

**FIRST AMENDED COMPLAINT
JURY DEMAND**

SCHOOL BOARD OF SARASOTA
COUNTY; SCHOOL BOARD OF
MIAMI-DADE COUNTY;
ORANGE COUNTY SCHOOL
BOARD; ST. JOHNS COUNTY
SCHOOL BOARD; and PASCO
COUNTY SCHOOL BOARD,

Defendants.

INTRODUCTION

1. Florida House Bill 1557 (2022) (widely known as the “Don’t Say Gay” law) is an unlawful attempt to stigmatize, silence, and erase LGBTQ people in Florida’s public schools. It seeks to do so by imposing a sweeping, vague ban covering any instruction on “sexual orientation and gender identity,” and by constructing a diffuse enforcement scheme designed to maximize the chilling effect of this prohibition.

2. Through H.B. 1557, Florida would deny to an entire generation that LGBTQ people exist and have equal dignity. This effort to control young minds through state censorship—and to demean LGBTQ lives by denying their reality—is a grave abuse of power. The United States Supreme Court has repeatedly affirmed that LGBTQ people and families are at home in our constitutional order. The State of Florida has no right to declare them outcasts, or to treat their allies as outlaws, by punishing schools where someone dares to affirm their identity and dignity.

3. H.B. 1557 piles one violation on top of another. It offends principles of free speech and equal protection by seeking to censor discussions of sexual orientation or gender identity that recognize and respect LGBTQ people and their families. It offends due process by using broad and vague terms to define its prohibitions—thus inviting discriminatory enforcement and magnifying its chilling effect on speech. And it arises from discriminatory purposes and outdated sex-based stereotypes that offend deeply rooted constitutional and statutory requirements.

4. To start, the law is clearly the product of animus towards Florida's LGBTQ community. The law's sponsor in the Senate has stated that the law is meant to prohibit discussion of LGBTQ sexual orientations and gender identities that do not comport with Florida's supposed "core belief systems and values." He has also stated that the law is intended to prevent students "coming out in school" to their peers from being treated as "celebrities." The premise of these statements is fear that LGBTQ students might live their true identities in school and be met with acceptance rather than state-sanctioned hostility targeting their protected characteristics.

5. This legislative purpose is reflected in H.B. 1557's statutory structure. H.B. 1557 subjects school districts to the threat of costly litigation if "school personnel" or "third parties" provide "classroom instruction" on "sexual orientation" or "gender identity" for students in K-3, or where such instruction is not "age-

appropriate or developmentally appropriate according to state standards.” The meaning of “classroom instruction” on “sexual orientation” and “gender identity” is subject to intractable uncertainty and disagreement, yet the statute’s drafters made a considered choice not to include definitions for any of these terms. The State need not even adopt “standards” until one year after the law goes into effect. But from the very outset, any parent can file suit if they believe that a school has violated these expansive, nebulous prohibitions. In this respect, H.B. 1557 recruits every parent as a roving censor, armed with a legal warrant to sue schools for damages whenever they believe a teacher, any other “school personnel,” or any “third party” has provided any “classroom instruction” that may be perceived as relating to “sexual orientation” or “gender identity.” The potential for arbitrary and discriminatory enforcement here is self-evident—and it reflects a choice designed to maximize the law’s *in terrorem* effects. H.B. 1557 thus operates in a manner antithetical to reasonable requirements of an age or developmentally appropriate education, instead creating a scheme in which parents can use the threat of litigation over vague statutory terms to menace school boards and intimidate teachers into offering a skewed, discriminatory curriculum.

6. While the law’s statutory text is broad and vague, and its enforcement mechanism is deliberately diffuse, its objective is clear: H.B. 1557 seeks to discourage, deter, and ban any discussion of LGBTQ identities in public schools,

while permitting discussion of heterosexuality and non-LGBTQ identities. In so doing, the State promotes a discriminatory dogma in which the only “appropriate” families, students, and teachers are straight and cisgender ones.

7. Indeed, the law’s vagueness and enforcement mechanisms are key to helping it achieve this discriminatory goal: nobody knows exactly what the statutory language covers, but everybody knows that the law’s purpose is to prohibit any discussion of LGBTQ people and that any aggrieved parent can file a burdensome lawsuit against the local school district, so the safest thing to do in order to avoid liability is for schools to prohibit any acknowledgment that LGBTQ people exist.

8. To appreciate how this dynamic is already unfolding in practice, just consider how students, teachers, parents, guests, and school personnel must navigate these common questions: Can a student of two gay parents talk about their family during a class debate about civics? Can that student paint a family portrait in art class? Can a lesbian student refer to their own coming out experience while responding to a work of literature? Can a transgender student talk about their gender identity while studying civil rights in history class? What if that occurs in homeroom, or during an extracurricular activity with a faculty supervisor, or in an op-ed in the faculty-supervised school newspaper? Are teachers allowed to respond if students discuss these aspects of their identities or family life in class? If so, what can they say? Do those same limits apply if a teacher intervenes where a student is

being bullied or beaten (or mistreated at home) based on their sexual orientation or gender identity? What if students address aspects of LGBTQ identity in essays for which teachers must provide grades and feedback? Speaking of which, can a history teacher educate their students about the history of LGBTQ rights? Can a government teacher discuss *Obergefell v. Hodges*, 576 U.S. 644 (2015)? Can an English teacher make note of LGBTQ themes or plots—and can they assign books in which one of the characters (or their families or a side character) is LGBTQ? Does the librarian have to remove every book with LGBTQ characters or references? Can a gay or transgender teacher put a family photo on their desk? Can they refer to themselves and their spouse (and their own children) by the proper pronouns? What do they do if a student’s same-sex parents visit the class together on career day, or ask to join a field trip? Are those parents forbidden from speaking to the class, on the theory that their very presence somehow instructs students on “sexual orientation”?

9. These questions only scratch the surface of the censorial regime (and the legal quagmire) that H.B. 1557 inflicts on teachers, students, parents, and so many others. By design, H.B. 1557 raises many questions and offers no answers, even as it works an extraordinary government intrusion on the rights of students, teachers, and parents in public schools.

10. One might even ask: would it violate H.B. 1557 for a teacher to discuss with their students *this very lawsuit* and the public controversy surrounding H.B.

1557? Unfortunately, we already know the answer to this question. As set forth below, Plaintiff Zander Moricz was specifically instructed not to mention H.B. 1557 or his participation in this lawsuit at his high school commencement speech.

11. The law’s vagueness—and its corresponding potential for unequal and discriminatory enforcement—is made clear by applications that its drafters clearly did *not* see as violations. A teacher who refers to a student’s “mom” and “dad,” or who presumes the normalcy of opposite-sex attraction while teaching literature, is “instructing” students on “sexual orientation” if H.B. 1557’s language is taken at face value. But the State of Florida has no problem with such run-of-the-mill references to the sexual orientation of non-LGBTQ people. Similarly, a coach who tells the football team to play like “men” has most certainly undertaken to “instruct” their students on “gender identity.” But here, too, H.B. 1557’s drafters surely see no problem. Or consider a still more commonplace example: if a teacher referred to his *opposite-sex* spouse by name, the sponsors of H.B. 1557 would see no issue, but if a teacher referred to his *same-sex* spouse by name, the sponsors of H.B. 1557 (and parents, free to sue) might think he broke the law.

12. By design, H.B. 1557 uses vague terms to create a statutory structure in which anyone who discusses or acknowledges any aspect of LGBTQ identity must fear running afoul of the law, while it is simply taken for granted that discussing heterosexuality or cisgender identity in school settings is perfectly fine.

13. The effect of H.B. 1557 is thus to chill the rights of teachers, students, and officials, who, like any rational person, will avoid the danger zone created by a state-mandated censorship code. And H.B. 1557 amplifies its chilling effect by empowering parents to sue school boards, the members of which will similarly be motivated to avoid lawsuits by quelling or punishing any potentially risky speech.

14. All of this is intentional. The purpose of H.B. 1557 is not to ensure that instruction on human sexuality is age-appropriate: Florida law *already* does that by requiring that teachers who address “human sexuality” must “[p]rovide instruction and material that is appropriate for the grade and age of the student.” Fla. Stat. § 1003.46(2)(d) (2021). Moreover, efforts to narrow H.B. 1557 to apply to instruction about sexuality or sex acts were repeatedly shot down in the Legislature. So too were efforts to clarify that the law prohibits discussion of *any* sexual orientation and gender identity, not just discussion of LGBTQ identities and issues.

15. The law as adopted is discriminatory: it aims at sexual orientations and gender identities that *differ from* heterosexual and cisgender identities. Florida’s lawmakers apparently believe such identities do not have any place in the public school environment—even though gay and transgender students, families, teachers, and officials are part of our public schools (and their communities).

16. The harmful effects of H.B. 1557 are already manifest in public schools across Florida. Faced with the law’s vague prohibitions and threat of litigation,

teachers and school administrators have said that they will remove LGBTQ references from the curriculum and no longer foster or participate in discussions that touch upon LGBTQ issues. LGBTQ students and parents are unsure about whether they can express or discuss their identities, which leads them to self-censor or face detention or other possible discipline or exclusion that may result if they do. The subordination and erasure of LGBTQ life that H.B. 1557 seeks to achieve has already begun—and it has already imposed concrete harms on children and families in Florida.

17. H.B. 1557 places Plaintiffs and countless others in danger. LGBTQ students already face disproportionality high risks to their mental and physical health. The law not only stigmatizes and silences those vulnerable students, exacerbating risks to their welfare, but also threatens school officials who foster a safe and inclusive environment for them—as they are required to do for all students under the Board of Education’s Code of Ethics. Moreover, H.B. 1557 erases other LGBTQ members of the school community and parents, to the detriment of all.

18. H.B. 1557 serves no legitimate pedagogical purpose. It is motivated by animus against LGBTQ students, families, and teachers of Florida, and those who would accept and support them in schools. By design and in effect, H.B. 1557 will “humiliate[] . . . children now being raised by same-sex [and other LGBTQ] couples,” and will make it “even more difficult for [them] to understand the integrity

and closeness of their own family and its concord with other families in their community and in their daily lives.” *United States v. Windsor*, 570 U.S. 744, 772 (2013).

19. H.B. 1557 thus reflects an effort by the State to use its power over public schools to demean and deny the existence of people whom the Supreme Court has repeatedly held to be protected. It has no place in a free democratic society.

20. For the reasons set forth herein, the Court should declare that H.B. 1557 violates the First and Fourteenth Amendments to the United States Constitution, and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (“Title IX”), and enjoin its implementation and enforcement.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution, 42 U.S.C. § 1983, and Title IX.

22. This Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because Defendants are public officials in the State of Florida, they are sued in their official capacities, and certain Defendants maintain their principal headquarters in this District. Defendants reside within this District and/or perform official duties within Florida.

23. There is an actual and justiciable controversy between Plaintiffs and Defendants because H.B. 1557 constitutes an immediate infringement on the constitutional and statutory rights of Plaintiffs.

PARTIES

I. Plaintiffs

24. Plaintiffs are organizations, students, parents, and teachers who are already being harmed and will continue to be harmed by H.B. 1557.

Organizations

25. Equality Florida. Plaintiff Equality Florida is a non-profit, public interest organization based in St. Petersburg, Florida. Its goal is to secure equal rights and protections for the LGBTQ community in Florida through education, grassroots organizing, coalition building, and lobbying. Equality Florida is the largest civil rights organization dedicated to securing full equality for Florida's LGBTQ community, with more than 140,000 members.

26. Equality Florida brings this action in its own capacity and in an associational capacity on behalf of its members. Its members include LGBTQ students and parents who attend or whose children attend Florida public schools, non-LGBTQ students and parents who support LGBTQ equality and who attend or whose children attend Florida public schools, LGBTQ teachers who teach in Florida public schools, non-LGBTQ teachers who support equality and teach in Florida

public schools, and other school personnel such as counselors who support equality and work in Florida public schools. Equality Florida's members represent a wide range of ages, races, and ethnic backgrounds and reside throughout the State of Florida.

27. In furtherance of its mission—which includes fighting discrimination against LGBTQ Floridians—Equality Florida has actively opposed the passage of H.B. 1557. Equality Florida's mission also includes education, and through programs like the Safe and Healthy Schools Project, Equality Florida works to create a culture of inclusion while countering the bullying, harassment, social isolation, and bigotry that increase risk factors for LGBTQ students.

28. Family Equality. Plaintiff Family Equality is a nationwide non-profit, public interest organization headquartered in New York, New York, with slightly fewer than 900 individuals on its email list in Florida. It brings this action in its own capacity.

29. Family Equality's mission is to ensure that everyone has the freedom to find, form, and sustain their families by advancing equality for the LGBTQ community. In furtherance of its mission, Family Equality works to advance legal and lived equality for LGBTQ families and those who wish to form them, including by ensuring that families have the support they need in school. Family Equality recently adopted a new strategic plan that included as a priority protecting LGBTQ

families and children from discrimination in schools as well as increasing Family Equality’s presence in the southern states, with an emphasis on the State of Florida.

Students

30. M.A. Plaintiff M.A. is a 17-year-old sophomore at Manatee School for the Arts, a public charter school in Palmetto, Florida. He lives with his mother, grandparents, and cousin.¹

31. M.A. has known that he is gay since a very early age. However, he did not come out to his family and friends until middle school. At the time, his mother could tell that he was struggling. She found out M.A. was gay by reading chats he was having with others online on his video game console.

32. M.A.’s mother was very supportive and told him that she loved him no matter what, and all he needed to do was be truthful and open with her. His grandparents were also supportive, even though they are conservative.

¹ Looking to its plain text and legislative history, H.B. 1557’s applicability to charter schools is unclear—a circumstance that itself will have a chilling effect on those schools’ LGBTQ communities. While charter schools are generally exempt from the Florida Early Learning-20 Education Code, they must comply with “statutes pertaining to student health, safety, and welfare.” Fla. Stat. § 1002.33(16)(a)(5) (2021). H.B. 1557 purports to relate to students’ “mental, emotional, or physical health or well-being.” It also amends Fla. Stat. § 1001.42(8), a section titled “Student welfare” containing provisions relating to “health, safety, and other matters relating to the welfare of students.” Fla. Stat. Ann. § 1001.42(8)(a). In addition, Governor DeSantis conducted the bill signing ceremony at a charter school, and his Press Secretary has stated that the law will apply in charter schools. *See* Danielle J. Brown, *Does the so-called ‘Don’t Say Gay’ law apply to Florida charter public schools?*, FLORIDA POLITICS (Mar. 30, 2022), <https://floridapolitics.com/archives/512625-does-the-so-called-dont-say-gay-law-apply-to-florida-charter-public-schools/>. Thus, while there are reasonable arguments that H.B. 1557 does not apply in charter schools, the State is likely to take the position that it does—a threat that is causing the very injuries identified in this Amended Complaint.

33. Sadly, M.A.'s father was a different story. When M.A. was younger, his father told his mother that if their son was gay, he "was never going to love him." After M.A.'s mother told his father about M.A.'s sexual orientation, his father initially expressed acceptance, but eventually terminated contact with him and is no longer a part of his life.

34. While M.A. had a (mostly) supportive family, coming out was difficult. He worried that people around him didn't understand what being gay actually meant. He had anxiety attacks at school, and his grades began to suffer. But after his mother found him a private counselor, he became empowered to identify his needs in school and at home, and to advocate for himself and other LGBTQ students.

35. In eighth grade, M.A. decided to start a Gay-Straight Alliance ("GSA") because he knew how important his family's support had been for him and he couldn't imagine what it was like for others who lacked that support. However, when M.A. and his teacher-advisor submitted their application, the school's administration rejected it, claiming that the school's bylaws barred the GSA and the creation of "non-academic organizations," even though there was no such written policy in place and other non-curricular student organizations existed. It took two years and the threat of legal action with the help of a local advocacy group to get the school to finally permit M.A. and his advisor to start the club.

36. Today, M.A. is the president of his school's GSA, which typically has between 15 and 30 members and creates a welcoming space for other LGBTQ students and their allies. As his mother put it, M.A. "found his voice" through the GSA.

37. Since starting the GSA, M.A.'s grades have improved significantly, and he is taking college-level classes. M.A. also participates in Mock Trial and in Manatee Teen Court as a student attorney.

38. S.S. Plaintiff S.S. is a 17-year-old junior at Miami Beach Senior High School. She lives with her Cuban-American mother and her father in Miami. S.S. is very successful at school—she consistently receives all A's and participates in her school's International Baccalaureate ("IB") program.

39. In middle school, S.S. identified as bisexual. She shared this with her friends starting in eighth grade, but did not tell her parents at that time.

40. During her freshman year of high school, after she had dated a boy, S.S. realized that she was only attracted to women. She then began to identify exclusively as a lesbian, rather than as bisexual.

41. S.S. first came out as a lesbian to her uncles who are gay in August 2020; she came out to her parents the following January. S.S.'s parents were very supportive of her sexuality. Since coming out to her parents, S.S. has also come out

to her father's side of the family. She has not come out to her mother's side of the family because she is worried they will not be accepting of her identity.

42. S.S. has gradually come out to people at school, including her friends and some teachers. In particular, S.S. found support from her ninth-grade biology teacher, who was her teacher at the time S.S. realized she was a lesbian.

43. S.S. believes that most of her peers and friends know that she is a lesbian, although she has never formally or publicly come out to peers who are not in her social circle. S.S. finds her school environment to be generally accepting, which has been enormously beneficial to S.S. and has allowed her to succeed both socially and academically. At least prior to the passage of H.B. 1557, S.S. has felt that she was "able to be herself" at school.

44. Zander Moricz. Plaintiff Zander Moricz is an 18-year-old who recently graduated from Pine View School, a public magnet school in Osprey, Florida for academically gifted students. His parents are divorced, and he mainly lives with his mother and younger brother.

45. Moricz has known he is gay since middle school. At the time, he felt as though he had to constantly hide who he truly was. He would modify his speech and physical gestures and modulate his interests to try to avoid being perceived as gay. He dreaded going to gym class because the boys would tease him in the locker room and call him names like "pussy" and "faggot." Living in this closeted

adolescence was deeply debilitating for Moricz at an important time in his life. He never felt like he fit in or belonged at his school.

46. Moricz transferred to Pine View School in sixth grade; he came out as gay during his freshman year. At the time, Moricz wanted to run for president of the freshman class and be a leader for his peers, but he wanted to run only if he could do so without being in the closet. Moricz ultimately decided to run, with support from a friend, and came out to his school and the broader community in the process. To his surprise, Moricz won. He remained class president for all four years.

47. At home, Moricz's family was not at first accepting of his sexuality. It took many difficult conversations for him to feel safe and accepted. But school was different and better. Moricz has had warm and accepting teachers and friends who embraced him for who he is, and he had many opportunities at school to express who he is and take pride in his identity.

48. Moricz's ability to be himself at school allowed him to succeed academically. He had a 5.06 GPA and took nearly every Advanced Placement course his high school offered. He also served as the president of the local Model UN chapter and the head debate captain of the Pine View Speech and Debate Club. He will attend college at Harvard University in the fall.

49. Jane Doe. Plaintiff Jane Doe is a fifth grader at a Florida public school. Doe lives half of the time with her mother (Plaintiff Lindsay McClelland) and her

siblings and stepfather in Brandon, Florida. She lives the other half of the time with her father.

50. From around age two, it was clear that although Doe was assigned male at birth, she identified as a girl. Doe would regularly tell her parents, “I am a girl.” When she started to choose her own clothes and toys, she immediately gravitated towards feminine clothing, nail polish, and dolls. She was also drawn to wearing her mother and grandmother’s shirts and sought to style them as dresses in order to express her female gender identity. On a family trip to Busch Gardens, when Doe was a young child, she was enamored with the female characters, like Abby Cadabby of *Sesame Street*. And when Doe discovered the Disney movie *Frozen*, she was obsessed with the lead princesses, Elsa and Anna.

51. For McClelland, this was all a huge shock. McClelland is a former Command Security Analyst for the United States Marine Corps, who grew up in a small town outside of Washington D.C. and was entirely unfamiliar with matters of transgender gender identity.

52. At first, McClelland tried to satisfy Doe by allowing her to wear dress-up costumes in the house as part of a game. But it quickly became apparent that “dress-up” would not be enough for Doe to feel like herself.

53. When Doe was two, her parents bought boys’ clothes—and traditionally masculine toys like trucks and airplanes—for Christmas. As Doe

opened her presents on Christmas morning, she looked deflated and sad because she didn't relate to any of the toys "Santa" had brought. McClelland saw that Doe did not have the same light and joy her sons had that Christmas morning.

54. From that point forward, McClelland realized that she had to embrace who her daughter was. And that is what she did. For Doe's fourth birthday, the family threw Doe a Rapunzel-themed party and gifted her a Dorothy dress from *The Wizard of Oz*. Doe was ecstatic. At another party, she wore a princess head garland and twirled with joy.

55. As soon as Doe's family started to allow Doe to be herself, they immediately experienced backlash from their community. Doe's family belonged to a large Baptist church in their neighborhood. McClelland and her husband were Bible school teachers and involved in community activities at the church. At a young age, Doe attended Easter morning church services in a dress. Soon after, the ministry reached out and encouraged the family to participate in a form of conversion therapy for Doe. They shared pamphlets on how to "fix" and "change" people like Doe. But McClelland knew that there was nothing about Doe that needed "fixing," and she told their church that she would not be participating in their efforts to change or convert Doe. As a result, the family was ostracized from their church community.

56. At the time, McClelland did not know anyone else in her community grappling with these issues, so she turned to support networks online. She found a

private Facebook group for parents of transgender children, and other parents shared resources with her. McClelland also found an organization in Tampa that provided health and wellness support to LGBTQ individuals, where she learned about the consequences of not supporting a transgender child, which include a high risk of mental health issues, drug abuse, and even suicide.

57. After speaking with her husband and Doe's father, McClelland decided it was best for Doe's development and safety to allow her to socially transition to a girl in preschool. Since then, Doe has used female pronouns and presented as female at school. Each year, before the start of school, McClelland speaks with both Doe's new classroom teacher and the school principal about how to ensure the classroom will be a safe environment for Doe. She informs the teacher of the use of proper pronouns for Doe (she/her) and discusses how best to mitigate any bullying, name calling, or teasing throughout the school year.

58. Despite these efforts, Doe is constantly afraid of being "outed" or bullied at school. Indeed, even with some support from the school, issues have still arisen. For example, in Doe's after-school program when she was younger, which took place at her school, the teacher required Doe to be the last or first to use the bathroom to ensure that no other girls were in the bathroom with her. This experience obviously ostracized Doe. And recently, Doe was "outed" by one of her

peers. As a result, Doe has increased anxiety and has been fearful about going back to school in the fall.

59. As she gets older, Doe struggles with how to safely and comfortably navigate her identity at school. Last year, as a fourth grader, Doe came out to a couple of her peers at school as transgender. And in January 2022, Doe legally changed her name to conform to her gender identity. Doe wants to live and be her authentic self, a self she has understood and expressed since she was a toddler. But in doing so, she has already faced bullying, name calling, and ostracization. Students have told Doe that she “looks like a boy,” and have used her name given at birth to taunt and tease her. As a result, Doe does not have a single close friend at school anymore.

Parents

60. Amy Morrison and Cecile Houry. Plaintiffs Rabbi Amy Morrison and Dr. Cecile Houry are a committed lesbian couple in a domestic partnership. They have been together for over a year. Houry is a member of Equality Florida.

61. Morrison is a Rabbi at a local temple and Houry works for the City of Miami Beach, managing the Police Department’s grants and victim services unit. They live together with their two children.

62. Morrison gave birth to her son in 2014. He is currently in the second grade at Miami Children’s Museum Charter School, a public school in Miami-Dade

County. Houry's daughter was placed with her as a foster child when she was six days old and legally adopted by Houry a year later. Houry's daughter is currently in preschool and will be starting kindergarten at Miami Children's Museum Charter School in August 2022.

63. Morrison and Houry have raised their children to embrace Morrison's "as you are" mindset that she espouses in her role as a Rabbi.

64. The children see nothing unique or particularly important about telling someone "My other mom played basketball with me," because they have always been open about their families.

65. Based on her religious beliefs, Morrison teaches that all individuals should be celebrated—not just accepted—for who they are. In other words, Morrison and Houry's children have no qualms about talking about their two moms because that is the life that they have always known; they haven't been taught to expect or idealize any other family structure.

66. These beliefs carry into life at school, where Morrison and Houry's children talk openly about their family. Morrison's son has a picture of the four of them hanging up in his classroom—and on multiple occasions, he has been asked to make drawings of his family, which have included a portrait of his two moms and his sister.

67. Dan and Brent VanTice. Plaintiffs Dan and Brent VanTice are a gay couple who have been together for twenty years and have been married for fifteen. They live in Saint Johns, Florida, and are the parents of two first-grade boys who go to public school in the area. Dan is an IT consultant and Brent is a financial services executive.

68. The VanTices are active members of Equality Florida. They are invested in their community, having fought to overturn Florida's previous bans on gay marriage and gay adoption. They always knew that they wanted to have a family.

69. When the VanTices first decided to adopt, adoption by gay couples was illegal in Florida. As a result, they went to great lengths and expense to work with an adoption agency based in California. Later, after the adoption ban in Florida was overturned, they also began to work with an agency in Florida. In the summer of 2014, they were informed that they would be able to adopt not one, but two, children. The VanTices were present at both births and have been raising their two sons, who were born just eight weeks apart, ever since.

70. The VanTices have always worked hard to communicate to their children that families come in many shapes and sizes, and that their family is no different than any other. They have spoken openly, freely, and lovingly about their family.

71. Lourdes Casares and Kimberly Feinberg. Plaintiffs Dr. Lourdes Casares and Dr. Kimberly Feinberg are a lesbian couple who have been together for over seventeen years. They married in 2016, when marriage became legal in Florida. Casares is a clinical psychologist and psychoanalyst, and Feinberg is an anesthesiologist. They live together in Miami-Dade County.

72. Casares and Feinberg have a child who is in K-3 at a public school in Miami-Dade County. Both parents are very active in and value the school community, and Feinberg serves on the school's PTA.

73. Lindsey Bingham Shook. Plaintiff Lindsey Bingham Shook is a heterosexual woman who lives with her partner and their daughter, a first grader at a public elementary school in Miami, Florida. Shook is an editorial director for a magazine. She is active in the community and involved in numerous non-profit organizations in the Florida area.

74. Shook's daughter has expressed no specific sexual orientation or gender identity. Shook wants her daughter to learn about the diversity of families in her community and to have empathy for all forms of families and identities.

75. Anh Volmer. Plaintiff Anh Volmer is a heterosexual woman who lives with her husband, her daughter, a kindergartener, and her son, a second grader. Her children attend public elementary school in the Orlando area. Her family attends events run by her local church, and she is active in her community.

76. Like Shook's children, Volmer's children have expressed no specific sexual orientation or gender identity. Volmer wants her children to learn that all families should be welcomed and included in their community.

77. Volmer's children recently attended a wedding of two women, and she is worried that once H.B. 1557 takes effect, her children will not be able to talk about experiences like attending that wedding or share information about their family's LGBTQ friends with their peers.

Teachers

78. Scott Berg. Plaintiff Scott Berg is a veteran elementary school teacher at Flamingo Elementary School in Broward County. Berg and his husband have been married for seven years and together as a couple for 11 years. Since becoming a teacher 29 years ago, Berg has taught nearly every grade in elementary school. He currently teaches elementary school art, and his students range from pre-kindergarten to fifth grade.

79. Myndee Washington. Plaintiff Myndee Washington is a long-time middle-school civics and drama teacher at Union Park Charter Academy in Pasco County. She is also a parent of three children. Washington is an active member of her local church and a proud Christian.

80. Throughout her teaching career, Washington has served as the teacher-advisor for gay-straight alliances, or GSAs, at her schools,² as well as supported other student-driven LGBTQ events and organizations, such as a student-led book club focused on books with LGBTQ characters. As a result of Washington's open support, LGBTQ students have routinely turned to and depended on her in school for resources and support.

81. As a teacher, Washington has frequently had organic, student-driven conversations touching on the LGBTQ community in connection with both her civics and drama curricula. For example, discrimination against the LGBTQ community has come up in the context of discussing key Supreme Court cases including the marriage equality decision *Obergefell v. Hodges*, and the school desegregation case, *Brown v. Board of Education*.

II. Defendants

82. Defendant Ronald D. DeSantis is the Governor of Florida. Governor DeSantis is responsible for signing H.B. 1557 into law and for taking care that the laws be faithfully executed as the Chief Executive of Florida. FLA. CONST., art. IV, § 1. Governor DeSantis is sued in his official capacity.

83. Defendant Florida State Board of Education is the chief implementing and coordinating body of K-12 public education in Florida. It supervises the State's

² Faculty sponsors are generally required for student groups in Florida public schools, which include GSAs.

public education system and the head of the Department of Education. FLA. CONST., art. IX, § 2; Fla. Stat. § 20.15(1) (2021). The Board of Education has authority to implement the provisions of law conferring duties upon it for the improvement of the State system of public education, including to adopt comprehensive educational objectives, approve plans for cooperation with other public agencies in the development of rules and enforcement of laws for which it and such agencies are responsible, enforce systemwide education goals and policies, and adopt and periodically review and revise the Next Generation Sunshine State Standards, which are the core content of the curricula to be taught in the state in K-12 public schools. Fla. Stat. §§ 1001.02-.03, 1003.41 (2021). Under H.B. 1557, the Board of Education is required to review and approve or reject any recommendation of a special magistrate as to whether a school district is in compliance with the law, and to adopt rules necessary to implement the foregoing procedure. *Id.* § 1001.42(8)(c)(7)(b)(I). The Board of Education is the recipient of federal financial assistance.

84. Defendant Thomas R. Grady is the Chairman of the Board of Education, and Defendant Ben Gibson is Vice Chairman. Defendants Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, and Joe York are members. All are sued in their official capacities as members of the Board of Education.

85. Defendant Jacob Oliva is the Commissioner of Education of Florida appointed by the Board of Education to serve as the Interim Commissioner of the

Department of Education until June 1, 2022.³ FLA. CONST., art. IX, § 1; Fla. Stat. § 20.15(2) (2021). As such, he is the chief educational officer of the State and responsible for assisting the Board of Education in enforcing compliance with the mission and goals of the education system; he also supports the Board of Education in general administration. Fla. Stat. § 1001.10. Along with the Board of Education, the Commissioner is charged with assigning the divisions of the Department of Education with such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education. *Id.* § 20.15(5). The Commissioner is required, as needed, to develop and submit proposed revisions of the Next Generation Sunshine State Standards to the Board of Education for adoption. *Id.* § 1003.41. Under H.B. 1557, the Commissioner is responsible for appointing a special magistrate to make a recommendation as to whether a school district is in compliance with the law. Oliva is sued in his official capacity as Commissioner of Education.

³ Manny Diaz, Jr. was appointed by the State Board of Education to serve as Florida's next Commissioner of Education on April 29, 2022. His appointment is effective June 1, 2022, five days after the filing of this Amended Complaint. See Fla. Dep't of Educ. Press Off., *Senator Manny Diaz, Jr. Unanimously Appointed as Florida's Commissioner of Education by State Board of Education* (Apr. 29, 2022), <https://www.fldoe.org/newsroom/latest-news/senator-manny-diaz-jr-unanimously-appointed-as-floridas-commissioner-of-education-by-state-board-of-education.stml>. Plaintiffs anticipate that Mr. Diaz will replace Mr. Oliva as a defendant on June 1, 2022.

86. Defendant Florida Department of Education is the administrative agency that is responsible for implementing Florida's education policies and programs, under the implementation direction of the Board of Education. Fla. Stat. §§ 20.15, 1001.20 (2021). Under H.B. 1557, the Department of Education is responsible for reviewing and updating, as necessary, school counseling frameworks and standards, educator practices and professional conduct principles, and any other student services, personnel guidelines, standards, or frameworks in accordance with the requirements of the act. The Department of Education is the recipient of federal financial assistance.

87. Defendant Broward County School Board is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The Broward County School Board operates Flamingo Elementary School, where Plaintiff Berg is employed as a teacher. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

88. Defendant School Board of Manatee County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Manatee County operates Manatee School for the Arts, which Plaintiff M.A. attends. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

89. Defendant School Board of Sarasota County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Sarasota County operates Pine View School, which Plaintiff Moricz attended. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

90. Defendant School Board of Miami-Dade County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Miami-Dade County operates Miami Beach Senior High School, which S.S. attends; Miami Children's Museum Charter School, which the children of Plaintiffs Morrison and Houry attend or will attend next year; the school attended by the child of Plaintiffs Casares and Feinberg; and the school attended by the child of Plaintiff Shook. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

91. Defendant Orange County School Board is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The Orange County School Board operates the school attended by the children of Plaintiff Volmer. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

92. Defendant Pasco County School Board is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The Pasco County School Board operates Union Park Charter Academy, where Plaintiff Washington is

employed as a teacher. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

93. Defendant St. Johns County School Board is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The St. Johns County School Board operates the school attended by the children of Plaintiffs Dan and Brent VanTice. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).

STATEMENT OF FACTS

I. Florida’s commitment and obligation to provide a meaningful education for all students, and school districts’ efforts to meet it

94. Florida has long affirmed the importance of providing all students with an education that will prepare them to live in a free democratic society—a principle that stands in stark, unmistakable tension with the goals underlying H.B. 1557.

95. Article IX of the Florida Constitution proclaims that “[t]he education of children is a fundamental value of the people of the State of Florida,” and it is therefore “a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” FLA. CONST. art. IX, § 1. As the Florida Supreme Court has recognized, “this education provision was placed in our constitution in recognition of the fact that education is absolutely essential to a free society under our governmental structure.” *Bush v. Holmes*, 919 So.2d 392, 405

(Fla. 2006) (quoting *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 409 (Fla. 1996) (Overton, J., concurring)).

96. The Supreme Court has affirmed the central role of public schools as “the nurseries of democracy.” *Mahanoy Area Sch. Dist. v. B. L. ex rel. Levy*, 141 S. Ct. 2038, 2046 (2021). Education “is the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

97. The “classroom is peculiarly the marketplace of ideas,” a place where our children are “trained through . . . that robust exchange of ideas which discovers truth out of a multitude of tongues, (rather) than through any kind of authoritative selection.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (quotation marks and citation omitted). Schools thus have an obligation to protect even “unpopular ideas,” *Mahanoy*, 141 S. Ct. at 2046, and to ensure that students have access to a diversity of information that will prepare them “for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members,” *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality op.).

98. In keeping with this longstanding commitment to “academic freedom,” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967), the First Amendment protects

students’ “right to receive information and ideas,” *Pico*, 457 U.S. at 867 (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)). Moreover, “students do not ‘shed their constitutional rights to freedom of speech or expression,’ even ‘at the school house gate.’” *Mahanoy*, 141 S. Ct. at 2044 (quoting *Tinker*, 393 U.S. at 506).

99. Florida guarantees that “all K-12 public school students are entitled to a uniform, safe, secure, efficient, and high quality system of education, one that allows students the opportunity to obtain a high quality education” that is “made available without discrimination on the basis of race, ethnicity, national origin, gender, disability, religion, or marital status.” Fla. Stat. § 1002.20(1), (7) (2021).

100. The Board of Education, through the Department of Education, has also adopted rules to ensure “Educational Equity.” Under Section 6B-1.0001 of the Code of Ethics, “The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.” Fla. Admin. Code r. 6A-10.081(1)(a).

101. Educators are required to “make reasonable effort to protect the student from conditions harmful to learning and/or to the student’s mental and/or physical health and/or safety”; to “not unreasonably deny a student access to diverse points of view”; to “not harass or discriminate against any student on the basis of . . . sex,

. . . [or] sexual orientation”; and to “make reasonable effort to assure that each student is protected from harassment or discrimination.” *Id.* r. 6A-10.081(2). In addition, “institutions have an affirmative duty” “to create an educational and work environment free of harassment on the basis of . . . sex.” *Id.* r. 6A-19.008.

102. Florida’s representatives and education officials thus have recognized for many years that public schools and educators have a commitment and duty to promote the meaningful education of all students, without discrimination, and to ensure that Florida’s students are prepared to live and flourish in a free democracy.

II. Florida schools’ inclusivity efforts for the LGBTQ community

103. In recent years, local school districts have aspired to make Florida’s promise of a meaningful education real for a historically excluded and disadvantaged group: LGBTQ students.

104. For instance, Plaintiff M.A.’s school district in Manatee County has an “Equity, Diversity, and Inclusion Policy” that requires “equal opportunity and access in relation to all stakeholders: students, families, and staff . . . by valuing, acknowledging, recognizing, and celebrating everyone in our school system” regardless of “gender, sex, gender identity, gender expression, [or] sexual orientation.” That policy instructs the School Board to, among other things, “[s]elect and develop instructional materials that are historically accurate and represent the experiences of the diverse school community,” and “interrupt and dismantle harmful

or inequitable practices and policies and eliminate implicit and explicit biases.”⁴ Manatee County also has a policy of Non-discrimination and Access to Equal Educational Opportunity that prohibits discrimination and harassment on the basis of sexual orientation, transgender status, and gender identity, and requires educational programs “be designed to meet the varying needs of all students.” Specifically, curriculum content must be considered in light of its potential “bias based upon the protected classes” and supplemented to fairly depict the contribution of different groups “toward the development of human society.”⁵ And finally, Manatee County previously adopted “LGBTQ+ District Guidelines” “intended to assist faculty, staff, and students in fostering positive self-image, establishing safe and inclusive schools, and promoting academic success for students who are, or are perceived to be, Lesbian, Gay, Bisexual, Transgender, or Questioning (LGBTQ),” which included eight “Actions” the district should take to support LGBTQ students in accordance with the laws in place at the time.⁶

105. St. Johns County School District, where Plaintiffs Dan and Brent VanTice’s sons attend school, adopted guidelines that include permitting the

⁴ School District of Manatee County Policy Manual, *po9142* (Oct. 27, 2020), <https://go.boarddocs.com/fl/mancofl/Board.nsf/goto?open&id=APMMA75599D6#>.

⁵ School District of Manatee County Policy Manual, *po2260* (Apr. 12, 2022), <https://go.boarddocs.com/fl/mancofl/Board.nsf/goto?open&id=APMMA75599D6#>.

⁶ School District of Manatee County, *LGBTQ+ District Guidelines*, https://web.archive.org/web/20211228214657/https://www.manateeschools.net/cms/lib/FL02202357/Centricity/Domain/4941/District_LGBTQ_Guidelines.pdf (last visited May 24, 2022).

formation of GSAs and prohibiting “try[ing] to silence students who are open about their sexual orientation or transgender identity, or who question their orientation or gender identity.”⁷

106. Plaintiff Moricz’s school district of Sarasota County adopted “Gender Diverse Student Guidelines” to “enhance ongoing efforts to make each Sarasota K-12 public school a safer place for all students – with particular emphasis on LGBTQIA community of students.” These guidelines specifically recognize that “[s]tudents who feel accepted at school are more highly motivated, engaged in learning and committed to achieving the best possible education.”⁸

107. The Miami-Dade County Public Schools, where Plaintiff S.S. and the children of Casares and Feinberg, Morrison, and Shook attend school, has “comprehensive anti-discrimination and anti-bullying policies that require all students be treated with respect regardless of their unique characteristics, including sexual orientation or gender identity.” The “Guidelines for Promoting Safe and Inclusive Schools” have the stated goal of “promot[ing] a positive, proactive approach that upholds and protects the rights of transgender and gender

⁷ St Johns County School District, *Guidelines for LGBTQ students-Follow Best Practices*, at 1 (last revised December 2021), <https://www.news4jax.com/news/local/2022/02/11/advocates-share-concerns-over-sjc-school-districts-guidelines-for-lgbtq-students/>.

⁸ Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Outlines*, at 3 (last reviewed March 25, 2022), https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1174/revised%20Gender%20Diverse%20Guidelines%20FINAL_10232018.pdf.

nonconforming students; and best practices to ensure that transgender students and gender nonconforming students have equitable access to all aspects of school life (academic, extracurricular and social) in ways that preserve and protect their dignity.”⁹ These guidelines highlight existing district policies that support LGBTQ youth, including prohibitions against anti-discrimination, bullying, and harassment, and include best practices to support and ensure the safety of all students.¹⁰

108. Similarly, Broward County School District, where Plaintiff Berg teaches, has sought to “promote safer schools and create more welcoming and affirming learning environments” for LGBTQ students, those perceived to be LGBTQ, and their allies.¹¹ As an example, Broward County requires an “inclusive curriculum” that must at least include literature written by LGBTQ authors, history including LGBTQ public figures, discussions of families including same-sex parents and relevant topics encompassing the diversity of LGBTQ young people, and recognition of national LGBTQ events.¹² Broward County has also adopted an anti-

⁹ Miami-Dade County Public Schools, *Guidelines for Promoting Safe and Inclusive Schools*, at 2 (last revised July 2020), <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>.

¹⁰ *Id.* at 2, 9-11.

¹¹ Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide*, at iv (2012), <https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>.

¹² *Id.* at 4-5.

bullying policy that prohibits bullying and harassment based on sexual orientation, gender identity, and gender expression.¹³

109. The Palm Beach County School District has supported LGBTQ youth by requiring an inclusive curriculum that covers, among other things, the history and social movements of LGBTQ people, discussions of families that include same-sex parents/caregivers, and relevant topics encompassing the diversity of LGBTQ young people. It also has adopted an Anti-Bullying Roundtable and Strategic Plan, which includes safe environments for all students and staff.^{14 15}

110. These measures have helped to create an inclusive environment for LGBTQ students that is critical to meeting their educational needs.¹⁶ They have

¹³ *Id.* at 5-6.

¹⁴ School District of Palm County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, at 5-6 (2d ed. 2021), [https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ Critical Support Guide SDPBC v02 2021.pdf](https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ%20Critical%20Support%20Guide%20SDPBC%20v02%202021.pdf).

¹⁵ Other counties have adopted similar guidelines. See Alachua County Public Schools, *LGBTQ+ Critical Support Guide* (Dec. 8, 2021), [https://web.archive.org/web/20211222213631/https://go.boarddocs.com/fl/alaco/Board.nsf/files/C9HSYJ7300DD/\\$file/LGBTQ+%20Critical%20support%20Guide.pdf](https://web.archive.org/web/20211222213631/https://go.boarddocs.com/fl/alaco/Board.nsf/files/C9HSYJ7300DD/$file/LGBTQ+%20Critical%20support%20Guide.pdf); Duval County Public Schools, *LGBTQ+ Support Guide* (2020), https://s3.documentcloud.org/documents/21988102/dcps_lgbtq_support_guide_2020.pdf; Hillsborough County Public Schools, *Lesbian, Gay, Bi-Sexual, Transgender, and Questioning/Queer (LBGTQ+) Critical Resource and Support Guide for Staff* (Aug. 31, 2021), <https://www.wfla.com/wp-content/uploads/sites/71/2022/02/Hillsborough-Schools-LGBTQ-Critical-Resource-Guide-2021-08.31.21.pdf>; Pinellas County Schools, *Inclusive Schools Support Guide: Promoting Safe and Inclusive Schools* (May 28, 2020), http://www.pccpta2020.com/wp-content/uploads/2021/09/Inclusive-Schools-Support-Guide_FINAL_5.28.20.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide* (2020), <https://beacononlinenews.com/wp-content/uploads/2022/03/VCS-LGBTQ-Support-Guide-2020.pdf>.

¹⁶ See, e.g., 2018-2019 NEA Resolutions, at 219-220, NATIONAL EDUCATION ASSOCIATION OF THE UNITED STATES OF AMERICA (2019), https://my.lwv.org/sites/default/files/resolutions_nea_hb_2019.pdf (recommending that schools adopt “inclusive educational programs that address the unique needs and concerns” of LGBTQ students).

also promoted the safety and acceptance of LGBTQ students, who are uniquely at risk of harassment, depression, and other negative educational experiences because of their sexual orientation or gender identity. *See infra* Part IV.

III. H.B. 1557 was enacted to undercut these developments, harm LGBTQ students, and stifle speech

111. H.B. 1557 seeks to undo all of this. Although it is formally entitled the “Parental Rights in Education Act,” it is popularly and more accurately known as Florida’s “Don’t Say Gay” law. H.B. 1557 is avowedly aimed at eliminating, and already has begun to eliminate, any recognition or discussion of LGBTQ persons in public schools.

Vague Statutory Text

112. In relevant part, H.B. 1557 amends Florida Statutes Section 1001.42 to add new subsection 8(c)(3), which provides:

Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

113. The law does not define the subject matter of the speech it seeks to prohibit. Nowhere does it even attempt to define its operative terms. “Classroom instruction” is left undefined, as are “sexual orientation” and “gender identity.”¹⁷

¹⁷ Adding to its intended vagueness, the Preamble to H.B. 1557 states that it is a law “prohibiting classroom *discussion* about sexual orientation or gender identity.” (Emphasis added.)

Nor does the law define the actors whose speech is restricted: “school personnel” could span from teachers to principals to guidance counselors, while “third parties” ostensibly reaches anyone outside of the school personnel context, including parents, other family members, and even students.

114. The law’s prohibitions expressly apply in grades K-3. But despite the statements of many of the law’s supporters, they do not stop there. H.B. 1557 applies to any grade where “classroom instruction” is “not age-appropriate or developmentally appropriate in accordance with state standards.” As with its other core provisions, the law does not define what those “state standards” are. The law does require the Department of Education to “review and update” “school counseling frameworks and standards; educator practices and professional conduct principles; and any other student services personnel guidelines, standards, or frameworks,” but even that need not occur until June 30, 2023—a year *after* the law goes into effect.

115. In the meantime, any parent with a “concern” about a violation of H.B. 1557 may sue their school district for court costs and attorneys’ fees, subject only to the requirement to give 30 days’ notice. Notably, H.B. 1557 places no limit on when parents can sue school districts, and legislators rejected an amendment that would allow districts to recover costs and fees if they prevail. This means that parents will be able to file suit long before the Department of Education may provide any

guidance as to the meaning of certain aspects of the law, with little repercussion. Going forward, it will be “open season” on Florida school boards, who will find themselves under the constant threat of paying legal fees and costs if they do not accede to any parent’s demand to remove content, quell discussion, or ban curricula that the parent views as implicating H.B. 1557.

116. H.B. 1557’s vagueness gives rise to a host of intractable interpretive questions that further invite discriminatory enforcement and broad censorship.

117. Indeed, the list of unanswerable questions is virtually endless.

118. For example, does H.B. 1557 require the removal of all library books with LGBTQ characters or families, or those with discussion of LGBTQ history? What about book fairs (attended by third parties) that have books with same-sex families or reference LGBTQ issues? Some parents have already requested catalogues of their school’s library materials, no doubt intending to challenge any materials that hint at LGBTQ issues or people as prohibited under the new law.¹⁸

119. Another question that is likely to present itself in short order is whether H.B. 1557 bans teachers from participating in Gay-Straight Alliances. The statutory text is decidedly unclear. But, anticipating the passage of H.B. 1557, some parents have already sought information about teachers who are affiliated with GSAs.

¹⁸ H.B. 1557 is hardly the first instance of an effort to ban books that touch on LGBTQ persons and issues. *See, e.g.*, Matt Lavietes, *From book bans to ‘Don’t Say Gay’ bill, LGBTQ kids feel ‘erased’ in the classroom*, NBC NEWS (Feb. 20, 2022), <https://www.nbcnews.com/nbc-out/out-news/book-bans-dont-say-gay-bill-lgbtq-kids-feel-erased-classroom-rcna15819>.

120. Equally intractable questions will arise on a daily basis. To pose just a few of them: Does the law prohibit students from asking—or teachers from answering—questions about their families, or other families? Can students ask—and teachers answer—questions about historical events involving LGBTQ people? Would H.B. 1557 ban a teacher from discussing gay-rights decisions, like *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), where the Supreme Court held that LGBTQ persons cannot be discriminated against in employment? If a student writes a paper in which they discuss their gender identity or sexual orientation—and relate it to their argument—could a teacher not grade it? If the teacher did grade it, would they be prohibited from commenting on any aspect of the paper or discussing it with the student, thus leaving LGBTQ students at a systematic educational disadvantage?

121. Another deeply troubling context is school bullying. Does H.B. 1557 prohibit teachers from addressing LGBTQ issues that regularly arise in student-on-student bullying, for instance where the victim is gay or transgender and the bullying is partly the result of anti-LGBTQ prejudice?

122. Parents are also affected. What does the law require when parents come to talk to students about their jobs and one mentions their same-sex or transgender partner? Can a student's LGBTQ parents come into the classroom at all? Can a kindergarten student draw a picture of their LGBTQ parents? If they do, can the

teacher grade it? Can the teacher post it on the board with other students' drawings, or are students with same-sex parents excluded from such classroom projects?

123. Because H.B. 1557 was deliberately written to be vague and terrifying, all in service of discriminatory purposes, none of these questions are answerable by reference to either the text of the statute or any standard interpretive principle. The law uses sweeping language that fails to provide notice to a reasonable person of what is prohibited, while inviting arbitrary and abusive enforcement.

Discriminatory Purpose

124. The future of public education in Florida under this regime is apparent. It is one that goes backwards in time to an era of discrimination and abandons Florida's duty—and many school districts' efforts—to provide a meaningful and inclusive education for all students. Presented with vague prohibitions under the threat of litigation, schools and educators will be chilled from discussing or even referencing LGBTQ people, and LGBTQ students will be stigmatized, ostracized, and denied the educational opportunities that their non-LGBTQ peers receive.

125. That is precisely what the Florida lawmakers who supported and passed this law intended. Indeed, in statements reminiscent of what was said in Congress about the so-called Defense of Marriage Act in 1996, legislators and Governor DeSantis have been crystal-clear about their goal of eliminating any discussion about LGBTQ identities and issues from public schools. Just as legislators' statements

evidenced DOMA’s aim to interfere “with the equal dignity of same-sex marriages,” *Windsor*, 570 U.S. at 771-72, the statements here reflect a clear hostility towards and disapproval of LGBTQ students, parents, and teachers.

126. For example, the sponsor of H.B. 1557 in the Senate, Senator Dennis Baxley, openly admitted that the law is intended to prohibit discussions about sexual orientation and gender identity of LGBTQ students. He warned that “everybody now is all about coming out when you’re in school” and there is a “concern” about “kids trying on different kinds of things they hear about and different kinds of identities and experimenting.” Senator Baxley added that “parents are very concerned about the departure from the core belief systems and values.” He also claimed that “75% of people . . . agree with me that there’s something wrong with how we’re emphasizing this and all of a sudden overnight [students] are a celebrity when they felt like they were nobody.” These statements reveal an overt purpose of discriminating against LGBTQ people and their families—different kinds of identities that depart from Senator Baxley’s core belief systems and values—and an express desire to impose censorship in hopes of stamping out any recognition of LGBTQ identity.¹⁹

¹⁹ Fla. S., recording of proceedings, at 08:09:30-08:12:00 (Mar. 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true.

127. Were there any doubt, when Senator Baxley was asked if the reason for H.B. 1557 is that “there seems to be a big uptick in the number of children who are coming out as gay or experimenting and therefore we need to not discuss it in the younger grades,” he responded: “[W]e know there are social inputs into how people act and what they decide to do so, yeah, that’s part of our concern for the well-being of our children.”²⁰ As another senator observed, Senator Baxley’s comments are “what the court points to and quotes as a *prima facie* case, on its face, of invidious discrimination for what we have targeted and we have selected as a protected class.”²¹

128. In other contexts, Senator Baxley has explained that H.B. 1557 is designed to prevent discussion of LGBTQ families. At a Senate hearing on February 8, 2022, Republican Senator Travis Hutson gave the example of a math problem that includes the details that “Sally has two moms or Johnny has two dads.” Senator Baxley said that is “exactly” what the law aims to prevent.²²

²⁰ Fla. S., recording of proceedings, at 08:12:00-08:13:00 (Mar. 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true.

²¹ Kelly Hayes, ‘*Gay is not a permanent thing*’: Legislature passes bill to restrict LGBTQ topics in elementary schools, FLORIDA POLITICS (Mar. 9, 2022), <https://floridapolitics.com/archives/505744-gay-is-not-a-permanent-thing-legislature-sends-controversial-parental-rights-bill-to-governor/>. Consistent with his discriminatory aim behind H.B. 1557, in 2018 Senator Baxley told his constituents: “I know some districts where there’s a big infestation of homosexuals that are pushing their agenda”

²² Madeline Carlisle, *Florida Just Passed the “Don’t Say Gay” Bill. Here’s What It Means for Kids*, TIME (Mar. 8, 2022), <https://time.com/6155905/florida-dont-say-gay-passed/>.

129. H.B. 1557's sponsor in the House, Republican Joe Harding, has also been forthcoming about the law's discriminatory focus on LGBTQ students and issues. Representative Harding justified the law on the basis that talking about sexual orientation and gender identity could result in students "hav[ing] one identity in school and one at home because the school encourages that kind of behavior."²³

130. Other supporting legislators have been equally candid that H.B. 1557 is intended to bar discussions of gay, lesbian, and bisexual orientations and transgender identities, *i.e.*, anything besides the heterosexual and cisgender identities that they believe are aligned with "core belief systems and values."²⁴

131. For instance, in voicing support for H.B. 1557, Representative Juan Fernandez-Barquin claimed: "We have children as young as six years old being taught the radical leftist gender theory and that is frightening."²⁵ Senator Ileana Garcia also suggested that discussions of sexual orientation should be prohibited because "'gay' is not a permanent thing. LGBT is not a permanent thing."²⁶

²³ Kirby Wilson, *Republicans made changes to 'don't say gay' bill. LGBTQ advocates aren't buying it*, TAMPA BAY TIMES (Feb. 18, 2022), <https://www.tampabay.com/news/florida-politics/2022/02/17/republicans-made-changes-to-dont-say-gay-bill-lgbtq-advocates-arent-buying-it/>.

²⁴ Fla. S., recording of proceedings, at 08:11:30-08:12:00 (Mar. 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true.

²⁵ Kelly Hayes, *'We are in distress': House passes LGBTQ instruction bill despite pleas from Democrats*, FLORIDA POLITICS (Feb. 24, 2022), <https://floridapolitics.com/archives/500337-we-are-in-distress-house-passes-lgbtq-instruction-bill-despite-pleas-from-democrats/>.

²⁶ Kelly Hayes, *'Gay is not a permanent thing': Legislature passes bill to restrict LGBTQ topics in elementary schools*, FLORIDA POLITICS (Mar. 9, 2022), <https://floridapolitics.com/archives/505744-gay-is-not-a-permanent-thing-legislature-sends-controversial-parental-rights-bill-to-governor/>.

132. The premise of H.B. 1557 is that if schools and educators ignore the realities and concerns of their LGBTQ students, those students will be discouraged or deterred from being who they are, and will instead be heterosexual, cisgender members of society, as the State of Florida would apparently prefer them to be.

133. This effort to wipe out LGBTQ identity constitutes illegal discrimination, plain and simple.

134. Governor DeSantis, in turn, has left zero question that this is the reason for H.B. 1557. As he has explained: “We’ve seen instances of students being told by different folks in school, ‘Oh, don’t worry. Don’t pick your gender yet. Do all this other stuff.’” He voiced his support for the law because he does not approve of “injecting these concepts about choosing your gender” in schools.²⁷

135. Governor DeSantis also made clear that H.B. 1557’s limitation on “sexual instruction” does not apply to instruction on heterosexuality and cisgender identities. Rather, he asked rhetorically, “How many parents want their kids to have transgenderism or something injected into classroom instruction?”²⁸

136. Governor DeSantis’s press secretary, Christine Pushaw, confirmed this understanding. She called H.B. 1557 an “Anti-Grooming Bill” and said that “[i]f

²⁷ Li Cohen, *Florida advances ‘Don’t Say Gay’ bill that would bar LGBTQ discussions in schools*, CBS NEWS (Feb. 18, 2022), <https://www.cbsnews.com/news/florida-dont-say-gay-bill-lgbtq-schools-senate-committee/>.

²⁸ *Florida Governor DeSantis defends controversial ‘Don’t Say Gay’ bill*, CBS NEWS (Mar. 5, 2022), <https://www.cbsnews.com/news/florida-governor-desantis-defends-dont-say-gay-bill/>.

you're against the Anti-Grooming Bill, you are probably a groomer or at least you don't denounce the grooming of 4-8 year old children.”²⁹ She has also stated that “[a]ny adult who wants to discuss sexual and gender identity topics with other people’s 5- to 8-year-old children—while keeping this a secret from their parents—is either a groomer or is complicit in promoting an environment where grooming becomes normalized.”³⁰ Charitably read, Pushaw’s statements imply that even discussing LGBTQ issues or acknowledging LGBTQ people’s existence entices students to “become” LGBTQ; less charitably and perhaps more accurately read, they are a grotesque assertion that school personnel who discuss LGBTQ issues with students are akin to molesters.³¹

137. Pushaw’s statements were echoed by other supporters of H.B. 1557, who grasped the law’s discriminatory intent. For instance, the Florida Family Policy Council, a group that lists as a core issue “LGBT Agenda & Transgenderism,” has called H.B. 1557 the “Don’t turn my son into a daughter bill.”³²

²⁹ Christina Pushaw (@ChristinaPushaw), TWITTER (Mar. 4, 2022, 6:33 PM), <https://twitter.com/ChristinaPushaw/status/1499890719691051008>.

³⁰ Christina Pushaw (@ChristinaPushaw), TWITTER (Apr. 5, 2022, 9:12 AM), <https://twitter.com/ChristinaPushaw/status/1511331024541782020>.

³¹ See Monica Hesse, *Fans of Florida’s ‘Don’t Say Gay’ bill have a new favorite word: ‘grooming,’* WASH. POST (Mar. 12, 2022), <https://www.washingtonpost.com/lifestyle/2022/03/12/florida-dont-say-gay-bill/>. In fact, there is a very real risk that the law will *adversely* impact the detection and prevention of child abuse insofar as instances of sexual abuse and related behaviors are often reported to, or by, teachers and other school personnel. Measures that limit open lines of communication between students and teachers tend to result in students being afraid or ashamed to speak up about potentially problematic conduct or behavior.

³² Florida Family Policy Council, *About FFPC*, <https://www.flfamily.org/about-ffpc> (last visited May 23, 2022); Florida Family Policy Council, *Legislative Session Week 7 of 9 – February 25, 2022* (Feb. 25, 2022), <https://www.flfamily.org/uncategorized/week-7-of-9-insiders-report-legislative-session>.

138. Were there any lingering doubt as to the punitive and discriminatory intent behind H.B. 1557, on March 10, shortly before he signed it into law, Governor DeSantis again stated that “[i]n the state of Florida, we are not going to allow them to inject transgenderism into kindergarten.” He added, “[w]e don’t want transgenderism in kindergarten and first grade classrooms.”³³ And after the bill was passed, Governor DeSantis expressed his intention to “go on offense” against “injecting transgender ideology into kindergarten classrooms.”³⁴

139. Governor DeSantis has not expressed concerns about students identifying as cisgender (or heterosexual) at any age.

140. The mentality behind these statements is clear: discussions about LGBTQ people are wrong and must be prohibited because the mere recognition of LGBTQ existence will make otherwise heterosexual and cisgender children more likely to be gay and transgender. It is also a direct statement to LGBTQ children that you are not normal and if you can’t change, you should hide your identity. H.B. 1557 is not even a dog whistle; it is an open declaration of discrimination against LGBTQ children and children with LGBTQ parents. A law whose purpose is to prevent people from being LGBTQ is not only ridiculous, unscientific, and at odds

³³ *DeSantis slams ‘woke’ Disney after CEO condemns parents’ rights bill*, FOX NEWS (Mar. 11, 2022), <https://video.foxnews.com/v/6300358476001#sp=show-clips>.

³⁴ Christina Pushaw (@ChristinaPushaw), TWITTER (Apr. 22, 2022, 9:11 PM), https://twitter.com/ChristinaPushaw/status/1517672480571330566?s=20&t=pNnN0_XA5DfCsSbanAtxMA.

with reality; it is also offensive and unconstitutional. *See Obergefell*, 576 U.S. at 661 (“[P]sychiatrists and others [have] recognized that sexual orientation is both a normal expression of human sexuality and immutable.”).

141. Indeed, the legislative record is remarkably sparse with respect to any particular examples of “classroom instruction” that H.B. 1557 was somehow meant to “fix.” Instead, other than overtly discriminatory statements, proponents relied upon vague and generalized assertions about problems the law is intended to address. For instance, when asked for “specific examples” of why H.B. 1557 was needed in response to “lesson plans,” Senator Baxley, the bill’s sponsor in the Senate, suggested that others “visit some of the websites.”³⁵

Doubling Down on Chilling Speech and Promoting Discrimination

142. The intentional vagueness and discriminatory purpose of H.B. 1557 is further shown by the repeated refusal of lawmakers to adopt language that might mitigate the law’s widely recognized discriminatory and chilling effects.

143. Representative Carlos Smith introduced Amendment No. 703365 to replace “sexual orientation or gender identity” with “sexual activity.” That amendment failed.³⁶

³⁵ Fla. S. Comm. on Appropriations, recording of proceedings, at 46:00-47:00 (Feb. 28, 2022 at 10:00 AM) https://www.flsenate.gov/media/VideoPlayer?EventID=1_zc8d1g0v-202202281030&Redirect=true.

³⁶ Fla. H.R., recording of proceedings, at 03:43:30-03:47:30 (Feb. 2, 2022 at 1:00 PM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_zp1pj23y-202202221300&Redirect=true.

144. Senator Jeff Brandes (a Republican) similarly proposed several amendments to replace “sexual orientation or gender identity” with “human sexuality or sexual activity.” He stated: “If the intent of this bill isn’t to marginalize anyone, let’s make sure we aren’t.” But his amendments failed. Senator Baxley commented that Senator Brandes’s amendments would “significantly gut” the law’s intent—once again confirming that his goal was to marginalize LGBTQ people.³⁷

145. Senator Lauren Book proposed Amendment No. 755282 to clarify that “‘classroom instruction’ does not include instruction or discussion relating to” “family structures,” “objective historical events,” “bullying prevention,” “discussions between students,” and “questions asked by students and any answer.” That amendment failed.³⁸

146. Senator Randolph Bracy and Representative Marie Paule Woodson proposed Amendments Nos. 734244 and 600607, respectively, to clarify that the law “does not apply to any discussion between a student who identifies as transgender, gender nonconforming, non-binary, or otherwise LGBTQ and their peers.” Those amendments failed.³⁹

³⁷ Fla. S. Comm. on Appropriations, recording of proceedings, at 01:04:00-01:07:00 (Feb. 28, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_zc8d1g0v-202202281030&Redirect=true.

³⁸ Fla. S., recording of proceedings, at 05:23:30-05:33:30 (March 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true.

³⁹ Fla. S., recording of proceedings, at 05:33:30-05:37:00 (Mar. 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true; Fla. H.R., recording of proceedings, at 03:47:30-03:54:00 (Feb. 2, 2022 at 1:00 PM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_zp1pj23y-202202221300&Redirect=true.

147. Senator Tina Polsky proposed Amendment No. 290096 to clarify that “sexual orientation” “means an individual’s heterosexuality, homosexuality, or bisexuality,” and “gender identity” means “gender-related identity, appearance or behavior, regardless of whether such . . . is different from that traditionally associated with an individual’s physiology or assigned sex at birth.” That amendment failed.⁴⁰

148. Senator Gary Farmer proposed Amendment No. 175814 to amend a different provision of the Florida Education Code that requires health education to “teach[] the benefits of monogamous heterosexual marriage,” by striking the word “heterosexual.” Fla. Stat. § 1003.46(2)(a) (2021). That amendment failed.⁴¹

149. Representative Fentrice Driskell introduced Amendment No. 194533 to require a court to “award reasonable attorney fees and court costs” to prevailing school districts. That amendment failed.⁴²

150. The fact that these amendments failed further demonstrates the law’s true purpose. H.B. 1557 is not about prohibiting “classroom instruction” on “sexual orientation” and “gender identity” that is not “age-appropriate or developmentally appropriate.” Florida law *already* requires that health education, including

⁴⁰ Fla. S., recording of proceedings, at 04:50:30-04:55:00 (March 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true.

⁴¹ Fla. S., recording of proceedings, at 04:29:00-04:33:30 (Mar. 7, 2022 at 10:00 AM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_nty0d3lq-202203071000&Redirect=true.

⁴² Fla. H.R., recording of proceedings, at 04:23:00-04:28:30 (Feb. 2, 2022 at 1:00 PM), https://www.flsenate.gov/media/VideoPlayer?EventID=1_zp1pj23y-202202221300&Redirect=true.

instruction on “human sexuality,” “[p]rovide instruction and material that is appropriate for the grade and age of the student.” Fla. Stat. § 1003.46(2)(d) (2021).⁴³ Moreover, as the failed amendments make clear, the Legislature is perfectly capable of providing greater specificity when it wants to do so.

151. Any doubt on that score is confirmed by another recent enactment (albeit one that suffers from distinct infirmities): the “Stop WOKE Act.”⁴⁴ There, in seeking to prohibit “instruction” in public schools on critical race theory, the Legislature listed eight specific “concepts,” such as that “[a] person, by virtue of his or her race, color, national origin, or sex is inherently racist, sexist, or oppressive, whether consciously or unconsciously.”⁴⁵ Thus, when the Legislature undertakes to declare, with some level of specificity, what it doesn’t want taught in schools, it obviously knows how to do so. But here—in sharp contrast—the Legislature refused to provide any specifics about what “classroom instruction on sexual orientation or gender identity” means. Instead, it chose to enact a highly vague provision that invites arbitrary and discriminatory enforcement against LGBTQ people—exactly as the Legislature intended.

⁴³ This same provision, as noted, requires that instruction on human sexuality “[t]each the benefits of monogamous heterosexual marriage,” Fla. Stat. § 1003.46(2)(a) (2021), and in passing H.B. 1557 lawmakers refused to strike “heterosexual” from this text.

⁴⁴ H.B. 7 (2022).

⁴⁵ *Id.* § 2.

152. The Legislature did not define the prohibited “instruction” here because H.B. 1557 is aimed at (and already is) stifling all discussion about LGBTQ people, families, and issues, in response to lawmakers’ stated concerns about LGBTQ persons and issues having any presence in schools. And it accomplishes that aim through deliberately ambiguous and expansive proscriptions.

153. The discriminatory purpose of H.B. 1557 is further apparent from a persistent pattern of efforts by the current Legislature and Governor to use the legislative process to ostracize and harm LGBTQ people.

154. In December 2021, Governor DeSantis’s administration took down a Department of Education web page that provided anti-bullying resources to help promote safe school environments and address high rates of suicide after a right-wing online publication, the *Florida Capital Star*, raised questions with the Department about the inclusion of links to resources for LGBTQ young people.⁴⁶ That page was restored after the LGBTQ-related references were removed.

155. Last year, Governor DeSantis line-item vetoed all LGBTQ-related funding from the budget, including money earmarked for mental health

⁴⁶ Brody Levesque, *Florida’s DeSantis attacks LGBTQ youth by removing website resource*, LOS ANGELES BLADE (Dec. 6, 2021), <https://www.losangelesblade.com/2021/12/06/floridas-desantis-attacks-lgbtq-youth-by-removing-website-resource/>.

programming to support survivors of the Pulse night club massacre, to house homeless LGBTQ children, and for Orlando’s LGBTQ community center.⁴⁷

156. H.B. 1557 is merely the latest in a sequence of discriminatory laws and policies.

157. And H.B. 1557 itself reflects a longer history in which opponents of LGBTQ rights have used narratives of “depravity” and “grooming” to try to justify altering the school environment in ways meant to discriminate against LGBTQ people.⁴⁸

158. During a press conference on March 28, 2022, Governor DeSantis seized these narratives, stating falsely that critics of H.B. 1557 “support sexualizing kids in kindergarten” and “enabling schools to, quote, transition students to a, quote, different gender without the knowledge of the parent.”⁴⁹

IV. H.B. 1557 will inevitably harm the LGBTQ community and, in fact, is already doing so

159. H.B. 1557’s discrimination against the LGBTQ members of Florida’s public schools is plain. In purpose and effect, it denies their existence, demeans their families, and demands their silence. It thus “generates a feeling of inferiority as to

⁴⁷ Office of Governor Ron DeSantis, *2021 Veto List (2021)*, <https://www.flgov.com/wp-content/uploads/2021/06/2021-Veto-List-Final.pdf>.

⁴⁸ See, e.g., Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 COLUM. L. REV. 1461 (2017).

⁴⁹ Ryan Dailey, *DeSantis signs bill on how schools handle sexual orientation, gender identity*, PALM COAST OBSERVER (Mar. 28, 2022), <https://www.palmcoastobserver.com/article/desantis-signs-bill-on-how-schools-handle-sexual-orientation-gender-identity>.

[their] status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown*, 347 U.S. at 494. By denying to LGBTQ students, teachers, and families “full citizenship stature—equal opportunity to aspire, achieve, participate in and contribute to society,” Florida violates equal protection principles. *United States v. Virginia*, 518 U.S. 515, 532 (1996). *Cf. Obergefell*, 576 U.S. at 670 (“It demeans gays and lesbians for the State to lock them out of a central institution of the Nation’s society.”).

160. H.B. 1557 is especially pernicious because it will invariably harm, and already is harming, a group that has faced heightened mental and physical risks. As President Biden recognized in condemning the law, H.B. 1557 is “designed to target and attack the kids who need support the most—LGBTQI+ students, who are already vulnerable to bullying and violence just for being themselves.”⁵⁰

161. The Trevor Project’s 2021 National Survey on LGBTQ Youth Mental Health found that 42% of LGBTQ youth seriously considered attempting suicide in the last year. 72% of respondents reported symptoms of generalized anxiety disorder in the last two years. 62% reported symptoms of major depressive disorder in the

⁵⁰ Anthony Izaguirre, *White House denounces Florida GOP over ‘Don’t Say Gay’ bill*, ASSOCIATED PRESS (Feb. 8, 2022), <https://apnews.com/article/education-florida-73ffe14f403d95e0cc09f2804d0d9ffe>. The American Academy of Child and Adolescent Psychiatry has likewise asserted that H.B. 1557 “blocks teachers and educators from talking about LGBTQ+ issues and undermines existing protections for LGBTQ+ youth and families in schools.” American Academy of Child & Adolescent Psychiatry, *Florida’s ‘Don’t Say Gay or Trans’ Law Stigmatizes LGBTQ+ Youth and Families* (Mar. 18, 2022), https://www.aacap.org/AACAP/zLatest_News/Floridas_Dont_Say_Gay_or_Trans_Law_Stigmatizes_LGBTQ_Youth_Families.aspx.

last two weeks. And nearly half wanted counseling from mental health professionals but did not receive it.⁵¹

162. With respect to Florida schools specifically, the Gay, Lesbian and Straight Education Network's ("GLSEN") 2019 National School Climate Survey found that the school climate in Florida is "not safe" for most LGBTQ secondary school students, even before enactment of H.B. 1557.⁵² 94% of respondents heard students use "gay" in a negative way, 80% heard other homophobic remarks (*e.g.*, "fag") or negative remarks about gender expression, and 72% heard negative remarks about transgender people. Roughly 10% of respondents were victims of physical assault based on their sexual orientation or gender expression, and only 28% of LGBTQ students who reported incidents of verbal or physical harassment or assault said it resulted in effective staff intervention.

163. Students also described an environment of disparate treatment, where 31% were disciplined for public displays of affection that did not result in similar action for non-LGBTQ students, and 57% of transgender students were unable to use the bathroom aligned with their gender. Just 9% of students reported attending a school with a comprehensive anti-bullying and harassment policy that included

⁵¹ *National Survey on LGBTQ Youth Mental Health 2021*, THE TREVOR PROJECT, <https://www.thetrevorproject.org/survey-2021/?section=Introduction> (last visited May 24, 2022).

⁵² *2019 State Snapshot: School Climate for LGBTQ Students in Florida*, GLSEN (2021), <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>.

specific protections based on sexual orientation and gender identity and expression, 15% were taught positive representations of LGBTQ people, history, or events, and only a mere 3% reported receiving LGBTQ-inclusive sex education at school.

164. Similarly, the Youth Risk Behavior Survey—which is conducted by the CDC and managed by the Florida Department of Education to monitor priority health-risk behaviors that contribute substantially to the leading causes of death, disability, and social problems among youth⁵³—found that for the first time since sexual orientation was added in 2013, there has been an increase in LGBTQ youth seriously considering suicide. There was no corresponding shift among heterosexual and cisgender peers.⁵⁴

165. Lurking beneath these statistics is a sobering fact: LGBTQ students will suffer—and some of them will likely die—if this policy is allowed go into effect.

166. Indeed, ample research in neuroscience, social science, and education has demonstrated that threats based on social identity affect the health and education of students. Put simply, making children feel unsafe causes lasting damage to their

⁵³ On April 20, 2022, the Florida Department of Education ended its decades-long participation in the Youth Risk Behavior Survey, which means that Florida will no longer be collecting data necessary to understand and support adolescent health in Florida, including data that will determine the impact H.B. 1557 and other anti-LGBTQ laws and policies will have on Florida's youth. See Evie Blad, *Some States Back Away From a Major Student Well-Being Survey. Why, and What it Could Mean*, EDUCATION WEEK (May 5, 2022), <https://www.edweek.org/leadership/some-states-back-away-from-a-major-student-well-being-survey-why-and-what-it-could-mean/2022/05>.

⁵⁴ *Youth Risk Behavior Survey: Data Summary & Trends Report 2009-2019*, at 98 CENTERS FOR DISEASE CONTROL AND PREVENTION (2019) <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBSDataSummaryTrendsReport2019-508.pdf>.

physical health, brain development, and learning. And that is precisely why school districts have responded with the kinds of affirming and accepting measures that H.B. 1557 is designed to stamp out.

167. LGBTQ students who are taught an inclusive curriculum are less likely to hear homophobic remarks or remarks about gender expressions. They perform better academically and are more likely to pursue post-secondary education. They are also significantly more likely to have classmates who are somewhat or very accepting of LGBTQ people.⁵⁵

168. Having a supportive school environment is also tied to better mental health. LGBTQ youth who have the benefit of a trusted adult at their school have higher levels of self-esteem.⁵⁶ And anti-bullying policies that are specifically protective of LGBTQ students are tied to reduced bullying of LGBTQ students, as well as decreases in depressive symptoms and less psychological distress; this is also true for the presence of GSAs.⁵⁷ Moreover, affirming transgender and non-binary

⁵⁵ Joseph G. Kosciw et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

⁵⁶ Adrienne B. Dessel et al., *The importance of teacher support: Differential impacts by gender and sexuality*, 56 J. OF ADOLESCENCE 136 (2019).

⁵⁷ Jack Day et al., *Gay-Straight Alliances, Inclusive Policy, and School Climate: LGBTQ Youths' Experiences of Social Support and Bullying*, 30 J. OF RSCH. ON ADOLESCENCE 418 (2019).

youth by respecting their pronouns is also associated with lower rates of attempted suicide.⁵⁸

169. In short, LGBTQ students with inclusive educational environments receive a more equal and fair education; they are less likely to suffer discrimination, stigma, and harm; and they are more likely to report positive health outcomes.

170. H.B. 1557 thus will not just stigmatize and mark as “lesser” LGBTQ students—a serious injury in itself. It also will create and exacerbate environments where LGBTQ students are more likely to do poorly in school, experience bullying and harassment, and suffer higher risks to their mental and physical health. Indeed, a GLSEN survey found that in states with laws widely known as “No Promo Homo” laws, like H.B. 1557, students were more likely to hear homophobic remarks from school personnel, staff were far less effective in handling reported incidents of harassment or assault, and schools were less likely to have LGBTQ-related resources (such as comprehensive harassment policies, supportive school personnel, and Gay-Straight Alliances).⁵⁹

171. By banning discussions about LGBTQ students and issues and erasing LGBTQ students from their schools, H.B. 1557 will cause serious, irreparable, and

⁵⁸ *National Survey on LGBTQ Youth Mental Health 2021*, THE TREVOR PROJECT, <https://www.thetrevorproject.org/survey-2021/?section=Introduction> (last visited May 24, 2022).

⁵⁹ Joseph G. Kosciw et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools*, GLSEN (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

immediate harm to students. Beyond that, H.B. 1557 discriminates against LGBTQ parents, teachers, and other school personnel by denying their existence and ability to speak and participate freely in schools. And it injures non-LGBTQ persons who desire (for themselves or their children) an environment that is free of discrimination and provides for an open education.

172. The experiences of the student, parent, teacher, and organizational Plaintiffs in this case, and many others in Florida, reflect that these harms are already occurring and will continue to occur absent judicial relief. And, as discussed below, their experiences are emblematic of others across the state.

A. Harm to Students

173. The student Plaintiffs have already felt and witnessed first-hand the impact of H.B. 1557. Passage of this law has led to an environment where recognition of and discussion about LGBTQ persons and issues is chilled or silenced completely; LGBTQ students are relegated to second-class status; and LGBTQ students are unable to obtain as good an education as other students. Indeed, the evidence to date makes clear that the law’s proscription on “classroom instruction on sexual orientation and gender identity”—which has not even yet gone into effect as a technical matter—is already having effects far and wide throughout the Florida public school system.

174. On April 27, 2022, Moricz was called into his principal's office and informed that his upcoming commencement speech as senior class president could not include material related to his activism, including his activism against H.B. 1557 or his participation in this lawsuit. He was told that should he reference any forbidden topics during his speech, the administration would shut off his microphone and halt the ceremony.

175. Moricz delivered his class president speech at the Pine View graduation ceremony on May 22, 2022. Because of his principal's warning, and the administration's threat to cut off his microphone and disrupt the ceremony, Moricz did not directly address H.B. 1557 or this lawsuit, nor did he say the word "gay." In short, he was not permitted to give the speech he had planned to give, and he was not able to speak his own identity or values.

176. Instead, he developed a euphemism, in which he spoke about having curly hair, about the difficulties he faced growing up in Florida with curly hair—"due to the humidity," as he put it—and about his own failed and futile efforts to "straighten his curls." He said that ultimately he embraced his curly hair, and he thanked his class and his teachers and principal for accepting and embracing him as curly-haired (prior to the passage of H.B. 1557). "It's because of the love I've drawn from this community that I came out to my family," he said. "Now I'm happy—and that is what is at stake." Moricz went on: "There are going to be so many kids with

curly hair who need a community like Pine View, and they will not have one. Instead, they'll try to fix themselves so that they can exist in Florida's humid climate. . . . [My speech] needs to be about this for the thousands of curly-haired kids who are going to be forced to speak like this for their entire lives as students." He noted that his principal had always "loved my curls and loved me." But, Moricz said, "those we have given our power to"—a non-explicit reference to the passage of H.B. 1557, which he was forbidden from addressing directly—"are the reason that I have to stand here and talk about my hair during my graduation speech." Moricz's speech was met with cheers and a standing ovation, and his principal was the first to hug him.

177. Moricz's clever coded language enabled him to navigate the day. As Moricz always has, he found a way to soldier on, to care for others, and to call for justice. But he found it dehumanizing to have to speak cagily about his own identity—to be told, in effect, by the State, that there was something shameful and wrong about him that he should not say out loud. He had been thinking about and planning the speech he would give for years, and he was unable to give that speech. As he rewrote the speech in the weeks following his meeting in the principal's office, Moricz was frustrated, hurt, sad, and at times angry that he was being censored and silenced in his efforts to speak about his own identity and values. He wanted to speak openly and candidly, as he had learned to do, but he believed that if he defied

the principal's instructions, and the microphones were cut and the ceremony halted, an event that was meant as a celebration for all the students of his class would be ruined. He might put at risk the very love and support that had enabled him to flourish and find happiness at Pine View. Again, Moricz was put to the painful choice of having to hide or suppress a part of himself—to “straighten his curls”—in order to find acceptance. He had expected that on the day of his graduation, he would be accepted and celebrated as his authentic self, without stigma or censorship. The exercise of State power to stigmatize and censor Moricz thus caused him considerable emotional harm.

178. Current LGBTQ students in Florida who are not graduating this year are also understandably expressing acute fears about the upcoming school year. Students have reported wanting to “return to the closet” and are scared to express themselves.⁶⁰

179. Another 17-year-old gay student at Flagler Palm Coast Beach High School was suspended in March for organizing a school protest opposing H.B. 1557 and defying school officials' orders not to distribute rainbow pride flags. He has now been prohibited from running for senior class president.⁶¹

⁶⁰ See Michael Sainato, *'Hurtful and insulting': Florida teachers react to the 'don't say gay' bill*, THE GUARDIAN (Apr. 29, 2022), <https://www.theguardian.com/world/2022/apr/29/dont-say-gay-bill-florida-teachers-react>.

⁶¹ *Gay student says Flagler County school stopping run for student leadership*, NEWS4JAX (May 19, 2022), <https://www.news4jax.com/news/florida/2022/05/19/gay-student-says-flagler-county-school-stopping-run-for-student-leadership/>.

180. M.A. has been actively trying to increase teacher education and support at his school for those teachers who either are not inclined or do not know how to be supportive of LGBTQ students. A couple of months ago, he drafted and submitted a proposal to establish a “Committee on Classroom Practices” related to LGBTQ students. The committee would consist of students and teachers and be charged with creating guidelines for teachers on how to respond to common problems for LGBTQ students.

181. M.A. recognizes that there is little chance that this proposal will be considered, let alone implemented, as a result of the new law. He has therefore decided not to pursue conversations with the school on his proposal, as he justifiably fears that the school will simply ignore him.

182. M.A. knows that as his teachers face consequences, they will be afraid to do anything that could potentially violate the law, including acknowledging and helping LGBTQ students. M.A.’s GSA teacher-advisor has already warned him that she could potentially lose her job for adjusting pronouns to respect a student’s gender identity.

183. M.A. now fears that the very existence of the GSA that he fought for two long years to establish is at risk. And these fears have already been validated—the ALSO Youth Board of Directors (which supports GSAs across Florida) recently cancelled its GSA summit that had been scheduled for April 2022 because of “low

attendance” due to a “chilling effect” from H.B. 1557. And a smaller GSA summit that was supposed to take place in a school facility was moved outside of the school for fear of running afoul of H.B. 1557.

184. Similarly, Moricz’s teachers have said that they will need to remove their images of support, including pride flags and rainbows in the classroom. These insignia have always indicated to Moricz that he was in a safe and welcoming environment. But apparently out of fear that this support constitutes “classroom instruction on sexual orientation or gender identity,” teachers intend to self-censor.

185. S.S. similarly fears the impact that H.B. 1557 will have on her classroom experience. For instance, in her AP U.S. history class, the students recently learned about the Stonewall Riots, a lesson that S.S. found empowering and validating, not to mention meaningful to her development and education. S.S. worries that she will no longer be exposed to these kinds of lessons and the resulting discussions, and that her education will suffer.

186. Indeed, this has already been borne out. After H.B. 1557 was passed, one of the teachers in the IB program at S.S.’s school was discussing the importance of women in STEM. Another student asked how the teacher was defining “women,” and the teacher expressed that she did not want to answer and address the question because she might get fired. S.S. knows that situations like this will continue to

come up, as they always have, and that discussion is likely to be limited because of H.B. 1557.

187. While she was comfortable at school prior to the law, she believes that when the law goes into effect, she will no longer feel that way. She cannot imagine having to go to school each day knowing that her school environment does not welcome her. S.S. has begun to experience increased anxiety as she begins to observe and anticipate changes to her school as a result of H.B. 1557.

188. S.S. further fears that H.B. 1557 will empower those who have demonstrated their disapproval of LGBTQ individuals to treat LGBTQ students differently. One teacher with whom S.S. is close, and who S.S. assists on a regular basis, has made it clear to her students that she is not supportive of the LGBTQ community. The teacher has said that any LGBTQ “behavior” should be kept “behind closed doors.” S.S. finds this ironic because this teacher is incredibly fond of her. Since the passage of H.B. 1557, S.S. fears that if this teacher finds out that S.S. is a lesbian, she might feel empowered by the law to justify treating S.S. differently.

189. M.A. too shares these worries. In his creative writing class, he often writes about issues related to his sexual identity and sexual orientation more generally. For instance, he wrote about H.B. 1557 and how it would impact his life. Now it is unclear whether he would be able to write such an essay. M.A. also worked

on a project in which he was instructed to write a “rant” about an issue that he cares about. He wrote a response to those who say that gay marriage should be illegal, including by doing significant legal research into the history of gay marriage. Here, too, he worries that his education will be stymied by H.B. 1557. Similarly, in his biology class, M.A.’s peers recently asked what it meant to be transgender. His teacher explained in an accepting way that she was happy and comfortable in her body but that some people are not and everyone should be. M.A. believes that this conversation would no longer be possible.

190. For these reasons, on March 4, 2022, M.A. sent a letter to his state senator explaining why the senator should not vote for the bill. He explained:

History is consistent with common sense: it demonstrates that students must feel safe and affirmed, while laws and statutes must not unreasonably abridge their individual rights at school. Lawmakers are tasked with making sure legal statutes are in place to protect student rights. But when lawmakers remove those rights, like forcing developing children to not communicate their own experiences with their peers, they neglect to fulfill their duties. It’s a further disservice when teachers, including school counselors who have a confidentiality obligation, have to tell the students’ parents what they don’t want out in public.

191. The impact on curriculum and educational experiences is not limited to older students. In Palm Beach County, in early April and prior to the law going into effect, the Superintendent of Schools wrote a memo to principals mandating them to remove two children’s books—*I am Jazz* and *Call Me Max*, both of which are about

transgender youth—from the shelves and put them in a “location where students do not have access” so that the district could attempt to comply with the law.⁶²

192. Many parents of young children fear the long-term consequences H.B. 1557 could have on their children. These fears are not unfounded. Numerous psychologists, as well as the American Psychological Association itself, have commented on how H.B. 1557 is developmentally unhealthy for children in their early elementary years, particularly since the whole goal of early childhood education is to socialize young children so that they learn to be part of a broader community, which obviously necessarily includes safety and acceptance in the classroom.⁶³ As the APA has stated, “Prohibiting classroom discussion on these topics sends the message that identifying as LGBTQ is inherently wrong, stigmatizing and marginalizing children who may realize their difference at a young age,” and the resulting “increased social isolation and stigma can lead to depression, anxiety, self-harm and even suicide.”⁶⁴

193. Doe is just 11 years old, yet she too has already felt the impact of the new law. When Doe’s mother, McClelland, explained the new law to Doe at a high

⁶² See Jeffrey Rodack, *Florida School District Removes 2 Books About Transgender Kids*, NEWSMAX (Apr. 7, 2022), <https://www.newsmax.com/newsfront/florida-schools-law-lgbtq/2022/04/07/id/1064685/>.

⁶³ See Jacqueline Quynh, *Psychologists Explain Why HB 1557, Dubbed ‘Don’t Say Gay,’ Is Unhealthy For Children*, 4 CBS MIAMI (Mar. 29, 2022), <https://miami.cbslocal.com/2022/03/29/psychologists-dont-say-gay-unhealthy-for-children/>.

⁶⁴ Press Release, American Psychological Association, APA President condemns Florida’s ‘Don’t Say Gay’ bill (Mar. 9, 2022), <https://www.apa.org/news/press/releases/2022/03/florida-dont-say-gay>.

level, Doe asked McClelland if she is going to be okay. McClelland did not know how to respond.

194. McClelland already has heightened anxiety related to her daughter's safety at school. McClelland and her family are deeply concerned that H.B. 1557 will operate to stigmatize Doe in school, leading to bullying and ostracization. These fears have recently been validated: a little over a month after H.B. 1557 was passed, Doe was outed at school for the first time. Doe has only told two of her peers that she is transgender. These peers have known for years. Yet, after one of these peers got mad at Doe, she told a group of other students that she knew "secrets" about Doe, including that Doe is transgender and that she knows Doe's "real" name. The other students then came up to her and started to ask her if she was a boy. McClelland spoke with Doe's teacher and administrators about what happened and the school investigated the incident and disciplined the student, but McClelland believes that Doe's new school will not be able to handle such incidents meaningfully and effectively once H.B. 1557 has gone into effect. School officials feel similarly: they have told McClelland explicitly that they are not sure what will happen when issues such as these come up next year.

195. McClelland's ability to have open conversations with Doe's teachers and school officials is necessary for her to monitor and ensure her daughter's safety, as well as make sure her child can learn like every other student. Without having

staff and administration who are willing to engage in frank conversations with her, McClelland reasonably fears that her child's physical and mental safety are at risk. Indeed, Doe has already expressed anxiety and fear about substitute teachers to McClelland, explaining that she is not sure how new substitute teachers feel about the law and how they may treat her in the classroom as a result.

196. The VanTices also worry about their sons' safety and well-being, both physically and emotionally. They fear that H.B. 1557 will empower and embolden anyone—students, other parents, and even school officials—who might want to bully or ostracize their children because of their parents' sexual orientation.

197. As heterosexual parents, both Shook and Volmer fear the impact H.B. 1557 will have on their children's education. They want their children to be taught that all families are valid and that they can grow up to be themselves and be accepted in school, no matter their sexual orientation or gender identity. H.B. 1557 will prevent that from occurring.

198. Indeed, Shook is already feeling the chilling effect that H.B. 1557 has on her daughter's classroom environment. Just a few weeks ago, Shook's daughter hoped to bring to school a picture of herself marching in the Miami Pride parade. She thought this would be a good contribution to a lesson about women's history month. But Shook's daughter's teacher suggested that would not be a good idea in light of H.B. 1557, so Shook's daughter brought in another picture instead. Thus,

Shook has already experienced firsthand that she now has to limit what she and her daughter do and talk about at home—and certainly what her daughter talks about at school—so as not to put her daughter or her daughter’s teachers in precarious positions.

199. Similarly, while talking to his teacher, Morrison’s son, who is only eight years old, asked her if he could talk about his two moms. His teacher told him that he could always say something to her privately about them, but that she wasn’t sure that they would be able to have more public discussions. She also advised him that this was not something he should talk to administrators about. As a result, Morrison’s son has now internalized that being gay is a “controversial” and “taboo” topic.

200. Since the passage of H.B. 1557 and its vague ban on “classroom instruction on sexual orientation and gender identity,” Equality Florida’s members have reported an increase in the number of LGBTQ students experiencing harmful language or physical attacks from other members of the school community. In most incidents, students report that the school does little, if anything, to respond. Moreover, Equality Florida has learned that a transgender student at one school has been told by their principal that they are not allowed to talk about being transgender with other students because of the new law.

201. Equality Florida's members have also faced increased discrimination and censorship from their school administration because of H.B. 1557. For example, students at Lyman High School in Seminole County (including students who are members of Equality Florida), were told that they had to cover pictures of images of pride flags printed in the 2021-2022 yearbook with white stickers prior to distribution of the yearbook. While that decision was ultimately reversed after students raised the issue for their school board, the students were still required to include stickers alongside the pictures that said that the pictures were not part of a school-sponsored event.⁶⁵

B. Harm to Parents and Families

202. H.B. 1557 is also harming LGBTQ parents, who are being excluded from their children's education and stigmatized in front of their children. Many of these parents are already experiencing the reality that the lessons they have taught their children about acceptance and inclusion are being undermined by the new law and its fostering of an environment of discrimination.

203. For instance, when Dan VanTice was preparing to testify in front of the Florida State Senate regarding the impact of H.B. 1557 on his family, his son came up to him and asked if he was going to be able to talk about his family with his

⁶⁵ Senait Gebregiorgis, *Lyman High School students receive yearbooks with added disclaimer after photo controversy delay*, WESH2 (May 13, 2022), <https://www.wesh.com/article/lyman-high-school-students-receive-yearbooks/39997205#>.

friends at school. Dan had to honestly answer that he wasn't sure, but that was why he was testifying against the bill.

204. Days later, on Valentine's Day 2022, while Brent VanTice was driving their sons to school, the boys were discussing their excitement to pass out homemade Valentines to their friends. Brent jokingly asked one of his sons if he was going to say that his favorite Valentine was his Daddy. His son responded that he couldn't talk about his Daddy at school anymore because of H.B. 1557.

205. The VanTices know that H.B. 1557 will impact their sons' abilities to fully participate in their school curriculum. For example, every year, the boys are asked to bring in a picture of their family and to talk about their family with their teacher and peers. This is part of the way that their children, like many young children, build community at school—by talking and sharing stories about their family. The VanTices anticipate that when their children have a similar assignment next year, their children's participation in such an assignment will be limited, since as a result of H.B. 1557, their teacher will not be able to engage in classroom discussion that expressly include LGBTQ families.

206. Similarly, their sons have more than once been asked to bring their favorite book into school, and, on multiple occasions, they have brought in *Daddy, Papa, and Me*, a story about a toddler who happens to have gay parents. But this, along with other of their favorite books such as *Everywhere Babies*, have already

been added to “banned books” lists as the result of H.B. 1557. The VanTices know that if their children choose to bring these books to school in the future, they likely will not be able to share them with their classmates.

207. As a result of H.B. 1557, the VanTices sons’ participation in assignments like these will be limited since their teacher will not be able to engage with their family experience in the same way the teacher engages with the family experiences of students with heterosexual-parent families. Children with heterosexual parents will continue to express themselves, bond with their peers, and build community through their families, but the VanTices’ sons will be left out.

208. The VanTices also fear that H.B. 1557 will prevent them from being able to authentically present themselves when engaging in school activities, such as visiting or presenting to their children’s class or attending school-wide events or PTO meetings. Would speaking about their relationship and family, or even being present as a couple, constitute “classroom instruction” by “third parties”? Like everyone who reads the text of the statute, they do not know the answer to this question.

209. The VanTices have already experienced the way the law empowers and emboldens others to discriminate against them. Since H.B. 1557 was enacted, the VanTices have been stigmatized within their community, particularly from families

with straight parents, which has caused them to experience insomnia, anxiety, and increased stress.

210. Casares and Feinberg also have experienced adverse impacts on themselves and their child as a result of the new law. Since the law was enacted, their child has experienced an increase in the number of students at the child's school who are using the term "gay" as an insult.

211. Casares and Feinberg are also already experiencing a great deal of anxiety and concern for their child based on how H.B. 1557 will change the way teachers treat their child and will be required to limit their child's participation in instructional activities. For example, at the beginning of each school year since starting public school, their child has been asked to introduce their family to the class, whether through a picture or a family tree. This year, their child was instructed to do a project in which they were to write down two things they wanted their teacher to know about them and two things they wanted their peers to know about them. Their child shared with the teacher that they have two moms. Casares and Feinberg believe that, as a result of H.B. 1557, their child will not be able to participate in this and many other classroom activities with students who have heterosexual parents, and that their child's teacher will not be able to engage with (let alone comment on) their child's home and personal life. This will impede their child's ability to form meaningful and important relationships at school, let alone feel safe in their school

environment, as Casares and Feinberg recognize that in elementary school, in order for their child to have personal, warm connections with a teacher, it is important for teachers to be able to discuss and demonstrate empathy for a child's home life and family. The necessity of planning about how to navigate this new legal reality for their child is already causing them to experience severe anxiety and distress.

212. Since H.B. 1557 was signed into law, Casares and Feinberg have already begun to feel increased ostracization from their child's school personnel and community. As a result, they have already experienced the way that the law is impeding their ability to fully interact with their child's teacher and school community, as teachers, staff, and administrators are already altering their behavior and refraining from communicating with them on the same terms as opposite-sex parents. This will not only impact their involvement as classroom parents, but also Feinberg's role in the PTA. This will limit the effectiveness of their relationships with school staff and administrators, as well as the parent community, and will broadly undermine their ability to be included in regular class and school-wide activism, as well as their ability to rely on the school and its community to care for their child.

213. Morrison and Houry also are already experiencing anxiety and distress over the impact H.B. 1557 will have on their children. In the past, their children have felt comfortable and accepted at school, but Morrison and Houry are aware that

H.B. 1557 has changed and will continue to change their children's school environment in a negative way. They are aware that teachers will no longer be able to openly recognize and embrace their children's family structure, and that their children will be stigmatized at school and otherwise. For example, this year, when Houry's daughter made a Mother's Day Card, she drew a picture of her two moms. Houry is aware that her daughter's teacher will have a reason not to respond as positively or openly to her daughter sharing that she has two mothers as the teacher does to students with different-sex parents lest the teacher be accused of providing instruction about sexual orientation.

214. They are also experiencing anxiety and distress because their children will be made to feel that the differences in families are negative rather than positive, and that their children will no longer feel as safe or supported in being open about their family. They are concerned that because of the law, the curriculum for their children will have to be changed, and children will no longer receive education on the normalcy and value of differences, whether it be about families or any other aspects of life. They know that these changes, which required the marginalization of same-sex parent families, will harm their children by sending them a message that their family is inferior.

215. Moreover, Morrison and Houry fear that their role in the school community could be curtailed by H.B. 1557. Morrison and Houry are open that they

are a lesbian couple. They worry that, as a result of the culture of fear created by H.B. 1557, school personnel and other members of the school community will view their openness and lived value of acceptance as divisive. Morrison and Houry believe that they may no longer be included in school events, including career day or other classroom activities, because of a fear that their presence will lead to violations H.B. 1557 or make school community members uncomfortable. Further, they believe that even if they are included in these events, they will be ostracized or stigmatized for these same reasons. They worry about the impact this will have on their children.

C. Harm to Teachers and Other School Personnel

216. Many Plaintiffs have recognized the harm that H.B. 1557 is already inflicting on teachers and on teachers' ability to provide a welcoming and inclusive environment that is safe for LGBTQ students.

217. Berg has taught in elementary classrooms in California, Nevada, and Florida for over 29 years. Currently, Berg is an elementary school art teacher, and he will have to alter his curriculum as a result of H.B. 1557. For instance, in order to complement the social studies units currently being taught in the early-elementary school homerooms, Berg has his early elementary students draw their own families, but he will not do this next year. Berg is worried that such a lesson will invite scrutiny if students ask about Berg's own family (which consists of two men) or

other students' families, which may include LGBTQ individuals. Berg is also concerned that students in his classroom who have LGBTQ parents will not feel safe or comfortable drawing their own families as a result of H.B. 1557.

218. Berg also recognizes that a fundamental goal of early elementary education is to teach children empathy and how to socialize and interact with others in a respectful and safe manner. Berg feels that if he cannot address certain topics—such as a student noting that they have two moms in class or that families may look different—he will be unable to foster the inclusive environment necessary to best instruct young children. As a result, he will be less effective as a teacher.

219. To be clear, Berg is worried about far more than censorship. He is concerned that, in the environment created by H.B. 1557, if he even acknowledges his own identity as a gay male with a husband, he will be called a “pedophile” or a “groomer.” This is not only scary and offensive, but particularly heartbreaking for Berg because at an early age, he was taught to hate himself for being gay. He has spent decades of his life (through the support of professionals) dealing with his own internalized homophobia, and that wisdom about self-acceptance is something he attempts to pass on to his students, whether straight or gay. Berg feels that H.B. 1557 has stifled his ability to teach other children to accept themselves and others, and to prevent the damage that was done to Berg at a young age.

220. In fact, just recently in Berg's classroom, a student told another student that their artwork was "so gay." Berg was deeply offended, and afraid other students might be offended, but felt that he could not address the student or say anything at all because he was worried H.B. 1557 limited his ability to explain either the problematic usage of that phrase or how such a homophobic slur impacted him personally.

221. Notably, Berg teaches in a bilingual school, and he is a unique asset to the school as a native English speaker who also speaks Spanish fluently. Recently, a little girl in Berg's classroom who has difficulty speaking English, but also refused to speak Spanish, heard Berg speaking in Spanish. Immediately the little girl's face lit up. She suddenly had pride and self-acceptance, and even noted that "it was cool to speak two languages." Berg wishes that he could make students who identify as LGBTQ or who have LGBTQ parents feel that same level of acceptance, but Berg feels that he will not be able to do that since he will not be able to discuss that aspect of his or his students' identities because of H.B. 1557.

222. Washington, a middle school civics and drama teacher, has already changed aspects of her instruction to align with H.B. 1557. For example, every year, Washington's drama students compete in the Florida State Thespians competition. Until now, Washington has permitted transgender students to choose a song to

perform based on the student's gender identity. As a result of H.B. 1557, Washington will no longer do so.

223. Washington also plans to remove certain books from her classroom that touch on issues related to the LGBTQ community. For example, she currently has books such as *George*, *Fun Home*, *All Boys Aren't Blue*, and *Drama* in her classroom library, which she uses as part of her civics curriculum to teach about "banned books" in connection with the Supreme Court's *Board of Education v. Pico* decision. Washington will change how she discusses this case in her classroom to avoid violating H.B. 1557.

224. Other teachers are making similar changes to avoid discussion that includes LGBTQ families, people, or issues. A third-grade teacher in Volusia County recently explained that because of the possibility of lawsuits she will be "walking on eggshells" next year, and worries that she will have to take steps to "police kids' expression" during share time if they share a detail about their lives such as "my two uncles got married over the weekend."⁶⁶

225. Ultimately, given the vagueness of H.B. 1557's proscriptions on "classroom instruction on sexual orientation or gender identity," which can be enforced through a suit by any parent, Washington is aware that any mention of

⁶⁶ Kelly Field, *Under New Laws, Some Teachers Worry Supporting LGBTQ Students Will Get Them Sued or Fired*, USA TODAY (May 23, 2022), <https://www.usatoday.com/story/news/nation/2022/05/23/lgbtq-civil-rights-laws-worry-some-teachers-who-fear-punishment/9859737002/?gnt-cfr=1>.

LGBTQ identity or people could be turned against her. She has been forced by the law to change how she teaches and is already experiencing a constant fear of losing her job if she slips up and says something about LGBTQ people or issues, which would be emotionally devastating, in addition to a financial hardship.

226. Other teachers have already been penalized for doing so, even though H.B. 1557 has not yet gone into effect. For example, in Cape Coral, after the bill was signed into law, a first-year middle school art teacher was fired after her students drew LGBTQ flags during their free time in her class.⁶⁷ Another teacher was reported by a parent for wearing a “Protect Trans Kids” T-shirt on National Transgender Day of Visibility, and Defendant Byrd praised the parent in a Facebook post for reporting “[u]nacceptable teacher attire.”⁶⁸

227. Berg is very nervous about his ability to protect LGBTQ students in his classroom after the passage of H.B. 1557. Berg currently has one student who is being bullied and taunted because of their gender identity. Although Berg has discussed this bullying with the student’s homeroom teacher, both teachers are petrified to address it directly because of H.B. 1557.

⁶⁷ Dave Elias, *Cape Coral art teacher fired for discussing lgbtq topics*, NBC-2 (May 6, 2022), <https://nbc-2.com/news/local/2022/05/03/cape-coral-art-teacher-fired-for-discussing-lgbtq-topics/>.

⁶⁸ Emily Bloch (@emdrums), TWITTER (Apr. 1, 2022, 9:09 A.M.), <https://twitter.com/emdrums/status/1509880610143322112> (tweeting image of Def. Byrd’s Facebook post).

228. Washington is deeply concerned about the negative impact H.B. 1557 will have on her LGBTQ students and students with LGBTQ families, who will no longer be recognized or supported in the same way as other students.

229. As a middle-school teacher, Washington is deeply aware of the impact that these developments will have on students' mental health, as well as the ability of the other students to learn about tolerance and how to become effective members of a diverse society. Washington is concerned that H.B. 1557 will limit her effectiveness in the classroom to the detriment of her students' education by preventing her from including discussions of LGBTQ identity and issues on equal footing or from interacting on equal terms with LGBTQ students. Already, she has had students who have come to her because they have been harmed by the new law because it has emboldened those who do not support LGBTQ students. Since H.B. 1557 was passed, in scenes reminiscent of *The Scarlet Letter* by Nathaniel Hawthorne, two of Washington's students were "outed" by their peers and their peers' parents, who created a "phone chain" to further "out" the students to the wider parent community. The students both came to Washington in tears because they had been outed and feared the consequences they might face at home. One of the girls was afraid she would be kicked out of her home because her mother had previously said that if she ever found out that her daughter was gay, she would be kicked out of her house. In another example of the far-reaching (and absurd) effect of H.B. 1557,

a teacher at Washington's school recently pointed at each student as they entered his classroom and identified them as either "girl" or "boy" based on their sex assigned at birth.

230. Washington's students rely on her to provide them with support, in her role as both a teacher and GSA advisor. Washington is afraid that H.B. 1557 will prevent her from being able to fill the critical role as a supportive adult in these students' lives. Recently, Washington was asked by the parents of a transgender student in upper elementary school whether the student could join Washington's middle-school GSA because she lacked the support she needed in her elementary school. Washington initially agreed to the request but, given H.B. 1557, must reconsider whether agreeing to these parents' request could actually endanger her job.

231. H.B. 1557 also restricts Berg's ability to be open about his gay identity in the classroom to the same extent and in the same ordinary ways that heterosexual teachers are open about their heterosexual identity. As noted above, Berg does not put a picture of his husband on his desk, despite the fact that numerous other teachers have pictures of their spouses on their desks. Berg is concerned that even a simple photograph could be perceived as "grooming" his students or result in criticism or complaints from parents. Indeed, when Berg recently went on a vacation with his

husband, Berg told his students upon his return that he had gone on a trip with his “friend” because he was afraid of inviting unwanted scrutiny and adverse treatment.

232. Washington has many signs and posters in her classroom, including those supporting LGBTQ students. She is aware that if she keeps these signs up next year, she will be putting her job at risk and face ostracization from her colleagues, which could further limit her effectiveness as a teacher and leader in the school community. In fact, Washington already faced questioning by her colleagues for using a district-provided lanyard that had an LGBTQ-ally flag on it.

233. Another middle-school teacher and GSA teacher-advisor was recently given a formal directive by his school that he not use references to sexual orientation or gender identity with his students. This occurred after the school received a complaint from a parent that the teacher had wished students “Happy Lesbian Awareness Day” when students arrived at school, as well as a complaint from another teacher after he shared, at the student’s request, a student’s desire to be called by a name associated with a different sex. Worried for his job security, the teacher rushed to find a position at another school in the district for the upcoming school year even though he will now be teaching a different subject and will have to undergo recertification.

234. Other teachers have been harassed for speaking out against H.B. 1557. For example, a principal and teacher in Tallahassee faced harassment from parents,

including at a local school board meeting, in response to statements made on their private Facebook posts where they were critical of H.B. 1557.⁶⁹ Another teacher has been called numerous names, including “a groomer, a pedophile, [and] an indoctrinator.”⁷⁰

235. One gay kindergarten teacher, who has been teaching in Florida’s schools for six years, is concerned that he could lose his job just by answering his student’s questions about who he is married to. When he spoke publicly against H.B. 1557, he was harassed relentlessly on social media, called a “groomer,” and calls and emails were made to his superintendent demanding his termination.⁷¹

236. Since H.B. 1557 was introduced and enacted, LGBTQ teachers have also reported being targeted. Another teacher, who has been teaching history to middle- and high-school students in Live Oak, Florida for 17 years, reported that everyone in her school knows she is gay but she does not talk about it at school and it has not been an issue. She no longer feels that way. Instead, she feels “targeted” and that any interaction she has with students might put her job at risk. As just one

⁶⁹ Lynn Hatter, *A Tallahassee principal and teacher face calls to resign over Facebook posts, but the First Amendment likely protects them*, WFSU (May 17, 2022), <https://news.wfsu.org/wfsu-local-news/2022-05-17/a-tallahassee-principal-and-teacher-face-calls-to-resign-over-facebook-posts-but-the-first-amendment-likely-protects-them>.

⁷⁰ Andrew Atterbury, *Florida’s fight over ‘Don’t Say Gay’ is getting more heated. And it hasn’t even gone into effect yet*, POLITICO (May 17, 2022), <https://www.politico.com/news/2022/05/17/florida-fight-dont-say-gay-00032512>.

⁷¹ Cory Bernaert, *I’m a gay kindergarten teacher in Florida. These are the questions I’m asking myself*, NBC NEWS (Apr. 29, 2022), https://www.nbcnews.com/think/opinion/teach-kindergarten-florida-now-called-groomer-rcna26625?cid=sm_npd_nn_fb_ma&fbclid=IwAR1vL3CpWFa0uwnCd3nr0ppSY2cd2d30qh8WUiRob6-TRRp2JjU2lznclmM.

example, she fears that if a student comes out to her in front of the class, as has happened before, she could be fired.⁷² And as another teacher explained, the attacks feel personal and “like an intent to erase an entire population of people, as if they don’t exist.”⁷³

237. Following the enactment of H.B. 1557, some educators in Florida have already decided to quit the profession or leave the state to teach elsewhere. In March, a group of parents in Orlando called for disciplinary action against a sixth-grade science teacher for allegedly acknowledging his marriage to a man at school (even though the teacher denies such a discussion). This incident prompted his decision to stop teaching in Florida and pursue a career in real-estate instead.⁷⁴

238. Another fourth-grade teacher in Miami-Dade County, who had been teaching for more than four years, quit. The teacher, a lesbian, worried that the law would erase her identity as an LGBTQ teacher and put her “in the closet.”⁷⁵

239. Equality Florida’s membership includes teachers in Florida public schools, including Washington. Many of these teachers have reached out to Equality

⁷² Jay Michaelson, *The Don’t Say Gay Bill Is Worse Than It Sounds*, NEW YORK MAGAZINE (Mar. 24, 2022), <https://nymag.com/intelligencer/2022/03/florida-dont-say-gay-bill-is-even-worse-than-it-sounds.html?regwall-newsletter-signup=true>.

⁷³ Kelly Field, *Under New Laws, Some Teachers Worry Supporting LGBTQ Students Will Get Them Sued or Fired*, USA TODAY (May 23, 2022), <https://www.usatoday.com/story/news/nation/2022/05/23/lgbtq-civil-rights-laws-worry-some-teachers-who-fear-punishment/9859737002/?gnt-cfr=1>.

⁷⁴ Matt Laviertes, *I cannot teach in Florida: LGBTQ educators fear fallout from new school law*, NBC NEWS (Apr. 1, 2022), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/-cannot-teach-florida-lgbtq-educators-fear-fallout-new-school-law-rcna22106>.

⁷⁵ *Id.*

Florida since H.B. 1557 has been signed into law to ask for guidance as to how they should be responding to the law, and how it affects what they can do or say in a school environment or in the classroom. Some of these teachers have LGBTQ students they would like to support, including through service as teacher-advisors for GSAs or other student clubs—and also by protecting these LGBTQ students from bullying and harassment (which requires discussing LGBTQ identities and issues with students). But these teachers feel they must refrain from doing so because they are concerned about violating H.B. 1557 and being disciplined or fired. Some teachers have reported that they avoid engaging LGBTQ students all together because they fear what might happen as a result. Those that do engage have already faced consequences; for instance, one teacher who affirmed an LGBTQ student by informing the class that bullying about sexual orientation or gender identity is unacceptable is being harassed online by parents.

240. Equality Florida’s membership also includes LGBTQ teachers who are afraid to identify themselves as LGBTQ or discuss LGBTQ issues because they are concerned about violating H.B. 1557. Some LGBTQ teachers reasonably fear that acknowledging the existence of a same-sex or transgender partner or spouse to students would be considered a violation of H.B. 1557 and could result in discipline.

241. Finally, Equality Florida’s membership includes other school personnel, including school counselors, in Florida public schools. Counselors have

reported that they are afraid to talk with LGBTQ youth because they are concerned that they will lose their licensure or will be sued in a personal capacity simply for trying to hear from an LGBTQ student what their needs are. This fear has created an immense barrier in counselors' ability to do their jobs and provide students with access to necessary mental health services.

D. Harm to Organizational Plaintiffs

242. Equality Florida, and Family Equality's members are experiencing harm as a result of H.B. 1557, as set forth above.

243. The organizations themselves are also suffering injury to their mission and by virtue of the need to divert resources to combat an unjust law.

244. Equality Florida has been on the frontlines in educating the public about the dangers of and fighting against the passage of H.B. 1557 to protect its LGBTQ members. In doing so, the organization has already diverted significant financial and staff resources.

245. Equality Florida diverted funds received in connection with a grant from the Movement Voter Project to H.B. 1557. This grant was originally provided to Equality Florida without regard to H.B. 1557, and Equality Florida had planned to use these funds for recruitment purposes, but instead was forced to divert these funds to oppose H.B. 1557.

246. Equality Florida has raised and expended substantial financial resources in its fight against the passage and implementation of H.B. 1557, amounting to over \$250,000. These funds were spent on social media and television ads, staff travel to the legislature, and expenses relating to constituent lobbying days, among other things.

247. Equality Florida diverted money away from existing education and lobbying efforts by leveraging its relationship with national partners to recruit additional funds directly for H.B. 1557, which are funds that would have been diverted to public education and lobbying for other bills and/or issues.

248. Equality Florida's Public Policy Department shifted time and energy away from other programs, including time that would have been spent lobbying for other bills and supporting other policy efforts, to focus on fighting H.B. 1557. For example, Equality Florida's Senior Political Director spent three weeks focused solely on H.B. 1557 at the expense of other projects. And Equality Florida used funds to provide for him and other staff members to travel to and stay in Tallahassee so they could lobby against the bill. Equality Florida also increased its staffing to assist with efforts related to H.B. 1557. As a result of H.B. 1557, the part-time Public Policy Fellow who came on prior to legislative session had their weekly hours increased during the legislative session and subsequently was elevated to a newly

created, full-time salaried position with benefits, the Public Policy Associate, to assist with efforts related to H.B. 1557.

249. Equality Florida's Field Department also diverted significant time and resources away from their key programs, including Get Out the Vote and Persuasion programs, to coordinate the campaign against H.B. 1557. This included shifting staff and volunteer resources away from mid-term campaigns in municipalities, including for example Boynton Beach, and putting on hold standard programming, such as candidate and election tracking for mid-term elections. The Department was unable to hold general intern and volunteer recruitment programs and trainings, and volunteer wellness-support programs; as a result, the volunteer program lost participants and resources. Instead, the Department focused on organizing Days of Action, phone banking, and regional rallies and facilitating advocates from the Equality Florida network to travel to Tallahassee for the legislative session and lobby against H.B. 1557. The Department also lost a full-time staff member as a result of the bill and was forced to hire and train someone new to join the team.

250. Equality Florida also made a strategic decision to shift staff and resources away from Pride events, including those attended in the past, in order to focus on fighting against H.B. 1557. In doing so, Equality Florida sacrificed membership and volunteer recruitment opportunities, as well as the opportunity to strengthen its membership base.

251. Equality Florida’s educational mission is also directly implicated by H.B. 1557. Equality Florida administers a Safe and Healthy Schools Project, which aims to create a culture of inclusion while countering the bullying, harassment, social isolation, and bigotry that are risk factors for LGBTQ students. This project offers free resources to educators, students, parents, and supporters. It is the only statewide LGBTQ initiative focused on providing support and guidance to school districts.

252. As part of its Safe and Healthy Schools Project, Equality Florida has compiled materials for educators in Florida outlining policies and steps schools can take to ensure LGBTQ students are adequately supported. It also hosts the “All Together Now” conference, which one District Superintendent described as “about recognizing that we must move beyond the culture of indifference when it comes to securing LGBTQ safe learning environments. Policies and lip service get you nowhere without action.”⁷⁶

253. Already, Equality Florida has noticed many respects in which its efforts have been impacted by H.B. 1557. Equality Florida has learned that in anticipation of the law being enacted and going into effect, school districts with LGBTQ support guides have removed and/or begun to revise these guides. As a result, the guides have been significantly shortened or eliminated altogether, and key protections for

⁷⁶ Equality Florida, *Florida School District LGBTQ+ All Together Now Conference*, YOUTUBE (July 27, 2018), <https://www.youtube.com/watch?v=FTlMuJv2xko&t=84s>.

LGBTQ students have been removed. For example, in Duval County, a comprehensive, stand-alone 37-page LGBTQ Support Guide was eliminated, and replaced with significantly limited guidance and protections for LGBTQ students that are incorporated into a larger student support manual that references all student support services.⁷⁷ The “Equity, Diversity, and Inclusion Policy” in Manatee County, where M.A. is a student, has been taken off of the school district’s website and is being revised, and the “Guidelines for LGBTQ Students-Follow Best Practices” in St. Johns County, where the VanTices’ sons are in school have already been revised. Moreover, the Sarasota County Schools’ “Creating Safe Schools for All Students: Gender Diverse Student Guidelines” were updated on March 25, 2022, to remove references to elementary students.⁷⁸

254. Further, there is now a paralysis among school district leadership, which has become hesitant to engage in Equality Florida programming. Indeed, multiple school employees who had previously agreed to speak on panels for

⁷⁷ Claire Heddles, *What Duval Schools is cutting from its LGBTQ+ Support Guide*, JAXTDY, (May 17, 2022), <https://jaxtoday.org/2022/05/17/what-duval-schools-is-cutting-from-its-lgbtq-support-guide/>; Travis Gibson, *Duval County School Board reworks LGBTQ+ support guide, may notify parents of name change*, NEWS4JAX (May 17, 2022), <https://www.news4jax.com/news/local/2022/05/17/duval-county-school-board-holds-workshop-to-rework-lgbtq-support-guide/>.

⁷⁸ Compare Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Outlines*, at 2 (March 25, 2022), https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1174/revised%20Gender%20Diverse%20Guidelines%20FINAL_10232018.pdf with Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Outlines*, at 2 (Oct. 2018), https://web.archive.org/web/20220209143944/https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf.

Equality Florida have had to cancel after school leadership made it clear that they could not participate in a conference organized by Equality Florida. School members have expressed fears as to whether GSAs will be able to remain in existence, and some schools have prevented GSAs from forming in the first place.

255. Thus, the enactment of H.B. 1557 significantly changes what, if anything, Equality Florida can do in schools across the state.

256. Family Equality's mission is also directly impacted by H.B. 1557, as the law materially changes what, if anything, Family Equality can provide to Florida schools to fight discrimination against LGBTQ families and youth and to LGBTQ parents and their children to help them successfully navigate being a LGBTQ family in K-12 schools. For example, Family Equality has a "Book Nook," which provides a comprehensive list of the best LGBTQ books for children of all ages, including pre-K through third grade.⁷⁹ Family Equality fears that many of these books will not be permitted in schools when H.B. 1557 is in effect. Family Equality also has resources that it has created and provides to LGBTQ parents to help them and their families navigate the K-12 education system, including a toolkit and guidance on how parents can help create LGBTQ-friendly classrooms, advice for parents from other parents about how to foster LGBTQ-friendly schools, and guidelines for how

⁷⁹ *LGBTQ+ Books for Parents and Children*, FAMILY EQUALITY, <https://www.familyequality.org/family-support/lgbtq-books/> (last visited May 23, 2022).

to identify an LGBTQ-friendly school, among other resources. Given the passage of H.B. 1557, these resources will largely be inapplicable for Florida public schools.

257. As a result of its recent strategic plans and the passage of H.B. 1557, Family Equality has been and will continue to be shifting resources away from nationwide work toward work focused on Florida and other states that are considering laws similar to H.B. 1557. Family Equality is also going to now focus more time and effort on supporting families in Florida, particularly with respect to how to navigate the impact of H.B. 1557.

258. Family Equality has diverted and will have to divert many financial resources to address the impact of H.B. 1557 in Florida and beyond. Already, Family Equality has diverted resources away from other campaigns and projects nationwide to focus on fighting the law's impact. Family Equality has disseminated multiple "Action Alerts" to inform individuals on their mailing list about the impact of the H.B. 1557 and leadership has spent time and resources promoting its potential impact via op-eds, lobbying, and social media. Once H.B. 1557 is in effect, Family Equality will have to allocate resources to develop specific resources for Florida families as to how the law might impact them and what they can do to try to ensure that their families are as safe and supported as possible.

259. Family Equality's staff resources also have been and will be diverted. The policy team's resources have been shifted away from its other workstreams,

including its Family Equity and Justice Project, fighting anti-LGBTQ bills in other states, and the development of its “paths to parenthood” resource, to focus on H.B. 1557. And Family Equality’s former Chief Policy Officer, who serves as Of Counsel to Family Equality, traveled to Tallahassee specifically to testify against the bill. Since the bill’s passage, Family Equality has restructured its Policy Department and will be adding an attorney position focused primarily on schools, partly in response to making sure there are adequate staff resources to work on the impact of H.B. 1557; this individual will spend part of their time responding to H.B. 1557 specifically.

260. Family Equality’s communication team’s resources have also been and continue to be diverted away from other projects and campaigns to focus on urgent communications related to H.B. 1557. The communications team diverted time and bandwidth away from development and fundraising work, deliverables for the annual gala, and strategic brainstorming for a virtual fundraising and public awareness campaign, in order to focus on campaigns related to H.B. 1557. The team was also not able to disseminate time-sensitive digital campaigns for LGBTQ Families Day and National Foster Care Month because of time constraints related to the H.B. 1557 efforts. This impacted programming as well because press for events was limited. The Department of Family Engagement, Programs, and Data has also shifted resources. For example, once hired, the Chief Family Engagement and Programs officer will prioritize that department’s focus directly on family

engagement and programmatic priorities to support LGBTQ parents and their school-age children with an emphasis on Florida. Their team will work alongside the policy team to figure out what resources need to be developed to assist LGBTQ parents in Florida who are impacted by this new law.

CAUSES OF ACTION

COUNT I

Due Process Clause of the Fourteenth Amendment to the United States Constitution: Vagueness (Brought pursuant to 42 U.S.C. § 1983 by all Plaintiffs against all Defendants)

261. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

262. A law is “void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). These requirements have particular weight when the law threatens to impinge on First Amendment rights. *See Smith v. Goguen*, 415 U.S. 566, 573 (1974).

263. H.B. 1557 is void for vagueness and thereby violates Plaintiff’s Fourteenth Amendment rights facially and as applied by Defendants.

264. As to Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what students can and cannot say and do while participating in “classroom instruction” (a term that is itself vague), and because it invites arbitrary and discriminatory enforcement.

265. Similarly, as to Plaintiffs McClelland, Dan and Brent VanTice, Casares and Feinberg, Morrison and Houry, Shook, Volmer, and Equality Florida, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what parents can and cannot say and do in the course of “classroom instruction” (a term that is itself vague), and because it invites arbitrary and discriminatory enforcement.

266. As to Plaintiffs Berg, Washington, and Equality Florida, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what teachers can and cannot say and do during “classroom instruction” (a term that is itself vague), and because it invites arbitrary and discriminatory enforcement.

267. As to Plaintiffs Equality Florida and Family Equality, H.B. 1557 fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what the law permits and prohibits, and because it invites arbitrary and discriminatory enforcement.

268. H.B. 1557 prohibits “[c]lassroom instruction” by “third parties” on “sexual orientation” and “gender identity” in K-3, and otherwise in any context where it is not “age-appropriate” and “developmentally appropriate” in accordance with unspecified “state standards” that may go into effect long after the law does. These key terms are all ambiguous and undefined. The vagueness of these terms has

a chilling effect on the behavior and speech of students, including Plaintiffs M.A., S.S., Doe, and Equality Florida because they are unable to determine what the law does and does not prohibit; they are uncertain about what they are legally able to say and do in class; and they hesitate to speak or participate in class out of fear of violating the law and facing discipline from their school.

269. The law also has a chilling effect on the behavior and speech of parents, including Plaintiffs McClelland, Dan and Brent VanTice, Casares and Feinberg, Morrison and Houry, Shook, Volmer, and Equality Florida because they are likewise unable to determine what the law does and does not prohibit, and they are uncertain about what they are legally able to say and do in the classroom or school.

270. The vagueness and ambiguity of the law also have a chilling effect on the behavior and speech of LGBTQ teachers, including Plaintiffs Berg, Washington, and Equality Florida, because they are likewise unable to determine what the law does and does not prohibit, and they are uncertain about what they are legally able to say and do while teaching in school, for fear of violating the law.

271. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered and will continue to suffer irreparable injury, including violations of their rights under the Fourteenth Amendment to due process.

272. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered damages to be determined according to proof at trial.

COUNT II

**Equal Protection Clause of the Fourteenth Amendment
to the United States Constitution: Discrimination
(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, S.S., Doe,
Dan and Brent VanTice, Casares, Feinberg, Morrison, Houry, Berg, Equality
Florida, and Family Equality against all Defendants)**

273. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

274. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides: “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

275. Defendants have deprived Plaintiffs of the rights, privileges, or immunities secured by the Equal Protection Clause because Defendants, without sufficient justification, have treated Plaintiffs differently from other similarly situated persons based on their sex, sexual orientation, gender, gender identity, and transgender status.

276. H.B. 1557 was enacted with an invidiously discriminatory purpose and results in discriminatory and disparate effects, and thus violates the Fourteenth Amendment rights of Plaintiffs facially and as applied by Defendants.

277. Comments by the legislative sponsors of the Act, other legislators, and Governor DeSantis all confirm that H.B. 1557 was enacted, at least in part, with the unlawful purpose to discriminate against LGBTQ people. The public record reflects

a purpose to target, demean, belittle, and harass LGBTQ individuals and families, with the intent and effect of depriving them of full advantage of the academic and extracurricular opportunities provided by the school environment. It also reflects an effort to impose state-selected (but demonstrably outmoded and offensive) gender stereotypes as the dominant ideology and controlling rule of public education in Florida—a form of improper sex stereotyping prohibited by the Constitution.

278. In addition, H.B. 1557 is simply the latest in a long line of anti-LGBTQ laws that the Florida legislature and Governor have passed or attempted to pass in recent memory, further illustrating and confirming its invidiously discriminatory purpose. H.B. 1557 also follows in the footsteps of decades of “No Promo Homo” and “Don’t Say Gay” laws and has the same aim, which it achieves by imposing vague and broad proscriptions that invite—and indeed are already causing—discriminatory enforcement only against discussions of LGBTQ persons and issues.

279. Although the law has not yet taken effect, Plaintiffs have already suffered injury and ostracization from passage of the law, and from the imprimatur of discrimination by Defendants. And the law is substantially likely to encompass further material, educational, and other injuries to Plaintiffs in their school and personal lives.

280. For example, H.B. 1557 has already stigmatized and singled out LGBTQ students such as Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida as

inferior and unequal in public school settings; encouraged teachers and other students to view LGBTQ students as different and inferior and effectively condoned bullying and harassment by others; interfered with the healthy development and socialization of LGBTQ students; and harmed their health and well-being.

281. H.B. 1557 disparately harms LGBTQ students such as Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida and denies such students equal educational opportunities based on their LGBTQ orientation or identity.

282. H.B. 1557 also disparately harms LGBTQ teachers, such as Berg and Equality Florida, and LGBTQ parents including Plaintiffs Dan and Brent VanTice, Casares, Feinberg, Morrison, and Houry based on their LGBTQ orientation or identity.

283. In addition, as to Plaintiffs Dan and Brent VanTice, Casares and Feinberg, Morrison and Houry, and LGBTQ parent members of Equality Florida, H.B. 1557 violates the equal protection right to marry on the “same terms and conditions as opposite-sex couples.” *Obergefell*, 576 U.S. at 676; *see also id.* at 667 (“A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education.”); *Pavan v. Smith*, 137 S. Ct. 2075, 2078 (2017). The purpose and effect of H.B. 1557 is that LGBTQ married couples will be treated differently and worse than non-LGBTQ married couples in important aspects of their interactions with

Florida's public schools, and that the children of LGBTQ married couples will similarly suffer discrimination and disadvantage in Florida's public schools as compared to all other children.

284. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Dan and Brent VanTice, Casares, Feinberg, Morrison, Houry, Berg, Equality Florida, and Family Equality have already suffered and will continue to suffer irreparable injury, including violations of their Fourteenth Amendment rights to equal protection of the laws.

285. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Dan and Brent VanTice, Casares, Feinberg, Morrison, Houry, Equality Florida, and Family Equality have suffered damages to be determined according to proof at trial.

COUNT III

First Amendment to the United States Constitution:

Right to Receive Information

(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality against all Defendants)

286. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

287. The First Amendment to the United States Constitution provides: "Congress shall make no law ... abridging the freedom of speech." U.S. CONST.,

amend. I. The First Amendment applies to the state of Florida pursuant to the incorporation doctrine of the Fourteenth Amendment.

288. The First Amendment protects “the right to receive information and ideas.” *Pico*, 457 U.S. at 867. Laws regarding school curricula and instruction violate students’ First Amendment rights to receive information and ideas where they are not “reasonably related to legitimate pedagogical concerns,” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988), or where officials exercise their discretion over curricular decisions “in a narrowly partisan or political manner,” *Pico*, 457 U.S. at 870.

289. H.B. 1557 violates the First Amendment right to receive information and ideas of Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida facially and as applied by Defendants. More specifically, the law violates their right to receive and debate information and ideas concerning sexual orientation and gender identity, even when such information serves essential pedagogical purposes.

290. H.B. 1557’s restrictions on students’ rights to receive information and ideas concerning sexual orientation and gender identity are unrelated to legitimate pedagogical concerns, and serve no other legitimate state purpose. Instead, H.B. 1557 is rooted in animus against LGBTQ individuals, as demonstrated by the public record. H.B. 1557 is also the result of partisan or political decision-making.

291. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality have suffered and will continue to suffer irreparable injury, including violations of their First Amendment rights to receive information and ideas.

292. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality have suffered damages to be determined according to proof at trial.

COUNT IV

First Amendment to the United States Constitution:

Right to Freedom of Expression

(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality against all Defendants)

293. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

294. “[S]tudents do not ‘shed their constitutional rights of freedom to speech or expression,’ even ‘at the school house gate.’” *Mahanoy*, 141 S. Ct. at 2044 (quoting *Tinker*, 393 U.S. at 506). Thus, student speech is presumptively protected unless it “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” *Id.* at 2045 (quoting *Tinker*, 393 U.S. at 513).

295. Likewise, laws regulating students’ speech violate their First Amendment rights where such laws are not “reasonably related to legitimate pedagogical concerns.” *Kuhlmeier*, 484 U.S. at 273.

296. H.B. 1557 violates the First Amendment right to freedom of expression of students, including Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida facially and as applied by Defendants. More specifically, the law restricts Plaintiffs' ability to discuss topics related to sexual orientation and gender identity in class and related settings, and even restricts their ability to self-identify.

297. H.B. 1557's restrictions on students' rights to free expression concerning sexual orientation and gender identity are not justified by preventing disruption to the school environment, are unrelated to legitimate pedagogical concerns, and serve no other legitimate state purposes. Instead, the law is rooted in animus against LGBTQ individuals, as demonstrated by the public record.

298. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality have suffered and will continue to suffer irreparable injury, including violations of their First Amendment right to freedom of expression.

299. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality have suffered damages to be determined according to proof at trial.

COUNT V

First Amendment to the United States Constitution: Overbreadth

(Brought pursuant to 42 U.S.C. § 1983 by Plaintiffs M.A., S.S., Doe, Equality Florida, and Family Equality against all Defendants)

300. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

301. A “law may be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008)).

302. H.B. 1557 is overbroad in violation of the First Amendment rights of Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality facially and as applied by Defendants, because even to the extent that the law could be interpreted as having any legitimate pedagogical purpose, “a substantial number of its applications are unconstitutional.” *Id.* More specifically, even if H.B. 1557 has some legitimate pedagogical purpose, it is not narrowly tailored to that purpose but rather will be applied in a manner that broadly infringes Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality’s First Amendment rights to receive information and ideas, and their right to freedom of expression.

303. This overbreadth has a chilling effect on the behavior and speech of students, including Plaintiffs M.A., Moricz, S.S., Doe, and members of Equality Florida, resulting in the self-censoring and intentional avoidance of a broad, sweeping category of protected speech. For example, due to the overbreadth of H.B.

1557, students like Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida are discouraged from identifying themselves as LGBTQ in school or from coming out as LGBTQ; from sharing experiences or views about LGBTQ issues, sexual orientation, or gender identity in school, as Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida currently do; and from asking questions about LGBTQ issues, sexual orientation, or gender identity in school, as Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida currently do, all of which infringes on their First Amendment rights.

304. This overbreadth also has a chilling effect on the behavior and speech of teachers, including Plaintiffs Berg, Washington, and Equality Florida, resulting in the self-censoring and intentional avoidance of a broad, sweeping category of protected speech. For example, teachers are discouraged from providing students with accurate information about sexual orientation and gender identity for fear of violating the law, which infringes on the First Amendment right to receive information of Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida.

305. H.B. 1557's overbroad restrictions are not justified by preventing disruption to the school environment, are unrelated to legitimate pedagogical concerns, and serve no other legitimate state purposes. Instead, the law is rooted in animus against LGBTQ individuals, as demonstrated by the public record, as well as by partisan or political reasons.

306. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida have suffered and will continue to suffer irreparable injury, including violations of their First Amendment rights.

307. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, and Equality Florida have suffered damages to be determined according to proof at trial.

COUNT VI

**Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688:
Discrimination Based on Sex
(Brought by Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family
Equality against Defendants State Board of Education and Florida
Department of Education)
Discrimination Based on Sex**

308. Plaintiffs reallege and incorporate by reference the preceding allegations as though fully set forth herein.

309. Defendants State Board of Education and Florida Department of Education are recipients of federal financial assistance.

310. The acts and omissions of Defendants have violated Plaintiffs' M.A., S.S., Doe, Equality Florida, and Family Equality's rights under Title IX by discriminating against them on the basis of sex, which includes sexual orientation and gender identity.

311. More specifically, H.B. 1557 results in the disparate treatment of students in Florida's public education system on the basis of sex, because they are excluded from the participation in, denied the benefits of, and/or discriminated in education. By implementing and enforcing H.B. 1557, Defendants State Board of Education and Florida Department of Education are intentionally and/or with deliberate indifference engaging in such discrimination.

312. As a direct and proximate result of Defendants State Board of Education and Florida Department of Education's unlawful conduct, Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida, and Family Equality have suffered and will continue to suffer irreparable injury, including violations of their First Amendment rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, and request an award of the following relief:

313. A declaratory judgment that H.B. 1557 and the actions described herein deprive Plaintiffs of their rights under the United States Constitution, including the First and Fourteenth Amendments thereto, and applicable federal statutory law, including 42 U.S.C. § 1983;

314. Permanent injunctive relief enjoining Defendants from implementing and enforcing H.B. 1557 in violation of the rights guaranteed to Plaintiffs by the United States Constitution and applicable federal statutory law;⁸⁰

315. Nominal, compensatory, statutory, and punitive damages in an amount to be determined at trial, as well as prejudgment interest, where appropriate, including for the pain and suffering experienced by Plaintiff Moricz as a result of the censorship of his high school graduation speech;

316. An award of Plaintiffs' costs of suit and reasonable attorneys' fees, expenses, and costs under 42 U.S.C. § 1988 and other applicable laws; and

317. Such other relief as the Court deems necessary, just, and proper.

⁸⁰ Pursuant to the Court's Scheduling Order dated May 13, 2022 (ECF 44), the Court has set a trial date of February 13, 2023. Given the fact that trial is now scheduled to take place in relatively short order, Plaintiffs are no longer seeking a preliminary injunction at this time, since it will be more efficient and expeditious for the parties to proceed with discovery and trial. However, Plaintiffs reserve all rights to seek a preliminary injunction or any other appropriate remedy in the event that any of the Plaintiffs are treated in a way that requires such relief prior to trial or in the event that the February 13, 2023 trial date is postponed.

Dated: New York, New York
May 25, 2022

Respectfully submitted,



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Civil Action No. 4:22-cv-0134-AW-MJF

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____ , a person of suitable age and discretion who resides there,
 on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**United States District Court
Northern District of Florida**

EQUALITY FLORIDA, ET AL,

)

Number: 4:22-cv-00134-AW-MJF

PLAINTIFFS,

)

V.

)

RONALD DESANTIS, ET AL,

)

DEFENDANTS.

)

Verified Motion For Reconsideration and Motion For ADA Accommodations

and

**Verified Motion to Compel the Clerk to file and docket docket the filings
received by the Court on 5/24/2022 to complete the record on appeal and
support reconsideration/intervention**

and

Verified Motion for Recusal of Presiding Judge

and

Verified Motion for Order to Show Cause

NOW COMES, Scott Huminski ("Huminski"), and under oath, swears, deposes, states and moves as above and moves that the Court reconsider its intervention ruling of 5/23/2022, recuse, grant ADA accommodations and Compel the clerk to file papers in its possession and issue an order to show cause as to why State actors should not be held in contempt of the United States Courts for the following reasons:

The Court's opinion was prior to this Court's receipt of 3 filings that arrived at the Court on 5/24/2022, but were authored and served upon the parties on or before 5/13/2022. The order denying intervention wasn't mailed or served upon Huminski. Thus, the record on appeal will not be complete nor the decision-making process of this Court absent judicial review of ALL papers and pleadings prior to ruling. Attached hereto as Exhibit "A" are true and correct proof of copying and proof of shipping of papers that were in transit (4 court filings) at the time the order denying intervention was authored/issued.

FILED USDC FLND TO
MAY 31 '22 AM 11:22

1. This Court has adopted a procedure that discriminates against disabled indigent litigants that rely solely upon Social Security Disability for income by forcing the disabled indigent to:
 - *Travel to copy shops to print out copies and pay 20 cents per page
 - *Travel to shipping locations and pay for shipping/mailing services
 - *Both are activities a well-monied law firm can accomplish with a mouse click
 - *The disabled indigent have difficulty traveling and paying massive costs and fees for copies and shipping because of their disabilities and indigent status and should at least be on a level playing field as litigants such as Florida with the State treasury available to fund litigation.
 - *This discrimination allows the Court to expeditiously rule absent papers filed by the indigent disabled as they travel to printing companies, they are shipped back to the disabled and have to finally be shipped to the court. This case demonstrates a highly prejudicial course of conduct targeting disabled indigents that has no place in a court that wishes to obey and adopt the ADA.
2. Huminski has been determined fully disabled by the Social Security Administration for over 10 years and his sole source of income is Social Security Disability.
3. Courthouse staff, not a judicial authority, rejected 4 papers filed by Huminski in this matter which he intended as support for intervention and is required for the record on appeal in this matter. Low level court employees can not summarily deny the filing of papers pursuant to Due process. Attached hereto as Exhibit "B" are the Notice(s) of Filing as filed in the State Courts which does not discriminate against the disabled as this Court does, at least with regard to filing papers. Attached hereto as Exhibit "B" are true and correct copies of the first two pages of these documents. Attached hereto as Exhibit "C" is the service list for copies of the filings rejected by the Court that were also filed in State court as a backup. All parties have been served. Attached hereto as Exhibit "D" is a true and correct copy of the one page sent by the court announcing the refusal to file the documents received by the Court on 5/24/2022.
4. Huminski has not received and wasn't served the order denying intervention, the Court can refer to its mailing machine/software to verify this.
5. Ironically, all parties possess the rejected pleadings including Huminski and the State Courts have the papers ... the U.S.D.C. is the only party that has the papers, but, refuses to file and docket them that are supportive of intervention.

6. Exhibit "D" is a true and correct copy of the clerk's rejection letter concerning the filing of the 4 Court papers filed by Huminski and received by the Court on 5/24/2022. The postage on the envelope is \$.53 and only 1 page was included in the envelope from the court. These papers, in possession of the Court, should be filed prior to ruling on this paper and certainly prior to appeal to provide a complete record on appeal. Huminski has not received any returned documents back from the Court and can not timely regenerate the papers which are produced in New York State, shipped to Huminski and then shipped to the Court. Court deadlines do not allow time to re-produce the documents that are in possession of the Court that the Court refuses to file. A *per se* ADA violation.
7. The Clerk of the Court has refused to file the papers that were in transit to the Court when the Court denied intervention and true and correct first two pages from each motion and a notice of filing of the motions in State Court are attached hereto in Exhibit "B".
8. Huminski asserted identical claims related to the plaintiffs' issues concerning censorship and content-based discrimination against speech although the State of Florida has taken a more extreme approach by banishing Huminski from communication with the entire State government for perpetuity where Huminski resides and is a citizen. Florida's version of sending a political dissident to a gulag in Siberia. The content based discrimination concerning Huminski's speech is dissent and core protected political expression critical of government for which Huminski has a long record as a citizen-reporter. See generally Huminski v. Corsones, 396 F.3d 53 (2nd Cir. 2005)
9. Huminski's papers in this matter, consistent with the pleadings of the Plaintiff, asserts that the State of Florida conducts itself with a complete disdain and revulsion for the First Amendment most notably memorialized in the Statements of Judge Krier on 6/29/2017 in Huminski v. Town of Gilbert, et al., 17-CA-421, Florida 20th Circuit court, setting forth her willingness to reject the authority, integrity, dignity, powers and jurisdiction of the federal courts by plowing ahead in a State case that had been removed to the U.S.D.C. three days earlier on 6/26/2017, Huminski v. Town of Gilbert, et al., 9-17-ap-00509-FMD (Middle District of Florida, Bankruptcy Unit) to ban any and all speech by Huminski with the entire State of Florida's government and local law enforcement (including reporting of crime) as truly and correctly excerpted as follows (the Court is in possession of the hardcopy that has yet to be filed):

22 Are they gonna assign another case number to
23 this case? I don't know how they're gonna do
24 that.

25 MR. KUNASEK: My experience with orders to

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1 show cause in DR court, Your Honor, has led me to
2 believe that that normally does not happen.
3 We'll just stay under this case number.

4 MR. SARLO: The case number that's on the
5 order is a civil case number.

6 THE COURT: Right because that's the only
7 case number I have.

8 MR. SARLO: The clerk very well may ask us --

9 THE COURT: I know in Collier County, because
10 I've done a couple of these proceedings in
11 Collier, they do open a new file. So, if you
12 want that to happen, I would think that
13 somebody's gotta ask -- ask the Clerk to do that.

14 Okay. So, let's see. Middle of August is
15 okay for everybody?

16 MR. KUNASEK: Yes, Your Honor.

17 THE DEFENDANT: No.

18 THE COURT: Could we do it at --

19 THE DEFENDANT: This case has been removed to
20 bankruptcy court, so I'm not good with that.

21 THE COURT: Pardon me?

22 THE DEFENDANT: This case has been removed to
23 bankruptcy court --

24 THE COURT: This case hasn't been removed to
25 any place, Mr. Huminski.

1 THE DEFENDANT: Under bankruptcy rule 9027 --

2 THE COURT: Mr. Huminski, A, you're not a
3 lawyer and, B, this case doesn't get removed to
4 bankruptcy court. That's not how the law works.
5 Okay. You need to --

23 THE COURT: Yeah, 17-CA-421.

24 And, also, Madame Clerk, would you please
25 check with the clerk's office because, again, in

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1 Collier, they give -- They set up a new file.

2 It's a little bit difficult to have a civil -- a
3 criminal proceeding in a civil case. So, if you
4 could check with somebody about that, maybe we
5 can get that straightened out, too.

6 THE DEFENDANT: Your Honor, I'd like

23

7 permission to forward the rules of the bankruptcy
8 court to my attorney, so he can forward them to
9 you concerning the removal.

10 THE COURT: I'm not a bankruptcy court judge,
11 so if your attorney thinks that that should be
12 done in this case, well, I'm certain he can --

13 THE DEFENDANT: It's a federal court, so it
14 has jurisdiction everywhere.

15 THE COURT: Again, sir, this is not a
16 bankruptcy court. You can forward them to your
17 attorney and your attorney can decide whether or
18 not to forward them to me.

<break in text>

.

2 THE COURT: Well, you need to have an
3 attorney representing you throughout these
4 proceedings. You don't understand the law, Mr.
5 Huminski, and an attorney does and you seriously
6 need that kind of assistance. They go to school
7 for it. They go to school for three years for
8 it, then they -- then they, you know, watch other
9 attorneys do their job in training for their job
10 and they have -- and they've had practice in
11 doing their job. You haven't had any of that.
12 And these are serious charges. You could be in
13 jail for it. So, you need to make sure that --
14 that --

15 THE DEFENDANT: One further question, to get
16 it on the record. You will not respect the
17 removal to United States bankruptcy court?

d

18 THE COURT: It's not -- again, evidence that
19 you do not understand the law. It's not removed
20 to bankruptcy court. You can file bankruptcy, it
21 has nothing to do with a criminal proceeding.

22 THE DEFENDANT: Rule 9027 allows removal of
23 any state proceeding to bankruptcy court.

24 THE COURT: It's not removed to bankruptcy
25 court, okay? I might stay a civil proceeding, so

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18
1 such that we couldn't proceed with a judgement
2 against you, but you're the plaintiff in this
3 case, Mr. Huminski. You filed this action.

4 THE DEFENDANT: And I can remove it.

5 THE COURT: You can't remove it. It doesn't
6 work that way. You don't understand. You are
7 not in a law -- you are not a lawyer and you are
8 misstating the law.

9 THE DEFENDANT: What does bankruptcy rule
10 9027 allow you to do? It's about removal.

11 THE COURT: It does -- it's not removed to
12 bankruptcy court and this, today, is a criminal
13 proceeding. Criminal proceedings are definitely
14 not removed to bankruptcy court. There is
15 nothing that is -- that a bankruptcy court is
16 going to do that is going to stop this criminal
17 proceeding from --

18 THE DEFENDANT: IL got removed on Monday,
19 prior to today.

20 THE COURT: Okay. It's not removed. There's

18 THE DEFENDANT: It got removed on Monday,
19 prior to today.

20 THE COURT: Okay. It's not removed. There's
21 no removal.

22 THE DEFENDANT: That's not what the federal
23 law says.

24 THE COURT: Well, I think you're
25 misinterpreting the federal law. Bankruptcy

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19
1 court can stay a civil proceeding, meaning it can
2 stop the proceedings from going forward, but it's
3 not removed to bankruptcy court.

4 THE DEFENDANT: It can remove a proceeding
5 and it's called an adversary proceeding and it's
6 a very common in bankruptcy court.

7 THE COURT: Okay. Mr. Huminski -- Mr.
8 Huminski, you don't understand the law. Get an
9 attorney. I asked you to get an attorney
10 previously. I strongly recommended it. You
11 need an attorney. So --

<break in text>

2 MR. SARLO: No, Your Honor. We'll just put
 3 on the record that he enters a plea of not
 4 guilty. He reserves his fifth and sixth
 5 amendment right to (unintelligible) jury trial,
 6 if that's the way that the State decides to go.
 7 THE DEFENDANT: I'm gonna object to
 8 jurisdiction in this court.
 9 MR. SARLO: You've made that objection.

<obviously the public defender (on a *sui generis* common law case!) should have objected to jurisdiction and moved to dismiss for lack of any and all jurisdiction – it was removed to federal court, and the government doesn't barge into a civil case with a contempt allegation as plaintiff >

10. A true and correct copy of an email sent to all parties/attorneys of record in this case is attached hereto as Exhibit "E" that contains some content from the previous paragraph and much more. Noteworthy that more than a dozen Florida Assistant Attorney Generals were recipients of Exhibit "E" who likely are laughing concerning the ability of the State of Florida to disrespect the integrity, dignity, jurisdiction, powers and authority of the federal courts and this Courts refusal to allow intervention making the federal courts a laughing stock compared to the strict adherence of other States to respect the powers and authority of the federal courts. In Florida, in the eyes of the Florida Courts and now the Florida Attorney General's office, the federal courts are a joke to be ignored and treated as circus clowns to be ridiculed and disobeyed at every opportunity. There is no other explanation why a State judge, a State prosecutor and a State Public Defender going along with continuing a State case after it had been removed to federal court. They all should be held in criminal contempt of the District Court.
11. Below is a true and correct PACER listing of Huminski v. Town of Gilbert, et al, as removed to federal court on 6/26/2022, yet the 20th Circuit held a hearing described as an "arraignment" in Huminski v. Town of Gilbert, et al. (the removed State case contained a *sui generis* common law issue-contempt) in the complete absence of any and all jurisdiction to pursue the agenda of the State of Florida which was to silence all

communication with the State of Florida government, for life, which the State succeeded in securing in the absence of any and all jurisdiction at final judgment,

Name	Case No.	Case Title	Chapter / Lead BK case	Date Filed	Party Role	Date Closed
Huminski, Scott Alan (pty) (2 cases)	~~2:17-ap-00509-FMD~~ ~~2:17-bk-03658-FMD~~	Huminski v. Town of Gilbert, AZ et al Scott Alan Huminski	Lead BK: 2:17-bk-03658-FMD Scott Alan Huminski 7	06/26/17 04/28/17	Plaintiff Debtor	08/24/17 08/24/17

CM ECF Query Reports Utilities Help Log Out

U.S. Bankruptcy Court
Middle District of Florida (Ft. Myers)
Adversary Proceeding #: 2:17-ap-00509-FMD

Assigned to: Chief Judge Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski
Lead BK Chapter: 7
Show Associated Cases

Date Filed: 06/26/17
Date Terminated: 08/24/17
Date Removed From State: 06/26/17

Demand

Nature[s] of Suit: 01 Determination of removed claim or cause

12. True and correct audio from the above-described and transcribed hearing is available at <https://soundcloud.com/nelsonaudio/2017-07-23-183640-mp3>
13. This Court failed to adequately address the authorities cited in Huminski's Motion to Intervene and has failed to realize that the disdain and disrespect of the First Amendment that controls the behavior of the State of Florida in both Plaintiff's and Huminski's set of facts and is only surpassed by the disdain and disrespect of the State of Florida for the dignity, integrity, powers, authority and jurisdiction of the federal courts residing in Florida by plowing ahead in a State case after removal.
14. This Court ruled prior to receipt of all papers filed in the case by Huminski, notably 4 papers that were in transit. Attached hereto as Exhibit "A" are true and correct copies of proof of copying at Best Value Copying in New York, Proof of shipping via UPS of papers for filing and a scan of this Court's envelope with the postmark that transmitted the refusal to file and docket. The UPS shipment tracking for Best Value Copying to Huminski was 1Z14636X0391822342.
15. Huminski will immediately appeal this Court's decision to the 11th Circuit Court of Appeals in Atlanta upon denial of this Reconsideration Motion or refusal of the clerk to docket this paper.
16. None of the parties served, which includes all Plaintiffs and all Defendants opposed intervention and, likely, will remain silent with regard to this motion because Huminski's

intervention is proper. Only a *sua sponte* denial of intervention would succeed in this matter because no party opposed intervention, nor, honestly, could they have properly opposed intervention given the fact and authorities cited in the intervention paper.

17. A one word order such as "Denied" would have given the parties and the 11th Circuit the same logic and analysis as the instant opinion on intervention. Huminski will proceed with an interlocutory appeal after the forthcoming denial of reconsideration.
18. The refusal of this Court to serve the indigent disabled electronically places this class of persons at a disadvantage to all other attorneys who have appeared in this matter and Huminski still awaits a served copy of the order.
19. Disabled indigent litigants should not be given an advantage over the parties to this litigation, they merely should be treated equally as mandated by the ADA and not forced to incur costs, fees, travel, hardships and prejudice that other litigants do not have to endure.
20. The *sua sponte* ruling without notice deprived the parties and Huminski the notice required under Due Process to respond to the arguments posed by the Court and to create a record for appeal. A show cause order should have issued pursuant to Due Process. As it stands now only the relevant filings of Huminski (sans the papers the clerk refused to file) will be part of the record on appeal in the Eleventh Circuit and the few vague sentences from the Court's order absent analysis or on-point citation of authority. At least this motion to reconsider will allow the parties to set forth their view of the intervention to be heard on appeal. All parties should be allowed to respond to this motion to put into the record what they believe to be relevant to the intervention issue pursuant to Due Process and to create a record for appeal aside from the sparse order which doesn't mention *stare decisis* concerning First Amendment concerns which was a central issue proffered by Huminski.
21. The Court incorrectly stated that Huminski intervention was grounded upon State criminal cases. Huminski recounted, contrary to the Court's characterization, that the State converted a *sui generis* common law offense, contempt, to a statutory misdemeanor to banish Huminski from all communication with the entire State government for life when ancient law and authority in federal law and State legal authority classifies contempt as a *sui generis* common law offense. The reason for the illegitimate conversion to a statutory crime (absent a statute) was to ban Huminski's core protected political expression as a condition of release and to ultimately banish Huminski from communication with the entire government of Florida for life which was achieved in the

State contempt prosecution absent any and all jurisdiction and commenced when the matter had been removed to federal court. This Court should reject drinking the sham/fraud Kool-Aid of State actors detailed in the above transcript excerpts and attached hereto.

22. Another motivation of the State of Florida was to silence Huminski by evading the jurisdiction of the U.S. District Court (Bankruptcy Unit, Middle District of Florida, Chief Judge Caryl Delano presiding) that had exclusive jurisdiction over the *sui generis* contempt claims as a result of federal removal. Three days after removal, the State of Florida continued the contempt case containing the same contempt allegations as the case before the Bankruptcy Court. Attached hereto are google results for the search in Florida Courts regarding “contempt sui generis” attached hereto as Exhibit “F”. The Florida courts themselves characterize contempt as *sui generis* in nature, neither a statutory misdemeanor nor felony – not a crime. Exhibit “F” reveals that the State of Florida doesn’t and can not inject itself into contempt arising in a civil matter as a Plaintiff. None of the cases in Exhibit “F” list the State of Florida as a plaintiff which is absolutely consistent with the Rule of Law in Florida and the United States. State v. Huminski concerning the alleged contempt in Huminski v. Town of Gilbert is a fraudulent fiction achieved with a forgery of a County Court order by prosecutor Anthony Kunasek who committed suicide 30 days after Huminski’s initial filings in this matter.
23. An interlocutory appeal regarding denial of intervention will be a waste of the parties and Huminski’s and the 11th Circuit time and resources which can be remedied now by the Court simply filing and docketing the papers received by the Court on 5/24/2022 that Huminski has relied upon in the intervention and which he will rely upon on appeal. An appeal with a deliberately deficient record on appeal caused by courthouse staff will not further the interests of justice.
24. Huminski will file a motion for summary remand in the 11th Circuit with instructions to this Court to file court papers properly submitted to the Court if non-judicial staff is successful in intercepting and rejecting filings.
25. Noteworthy, is the State Courts filing of all documents this Court refuses to file which are at State Court websites located at,
https://edca.3dca.flcourts.org/DcaDocs/2021/1920/2021-1920_Notice_245631_DK15A202D20Notice20of20Filing.pdf
https://edca.3dca.flcourts.org/DcaDocs/2021/1920/2021-1920_Notice_245331_DK15A202D20Notice20of20Filing.pdf

https://edca.3dca.flcourts.org/DcaDocs/2021/1920/2021-1920_Notece_245273_DK15A202D20Notice20of20Filing.pdf
https://edca.3dca.flcourts.org/DcaDocs/2021/1920/2021-1920_Notece_245144_DK15A202D20Notice20of20Filing.pdf

The clerks interception and refusal to file instead of orderly compliance with Due Process and the ADA as the State Courts have done above related to redress of grievances is an improper discrimination against the disabled indigent and a First Amendment deprivation. This Court can learn from the State Courts as to treatment under the ADA of disabled indigent litigants with respect to treating the disabled equally to able-bodied well-funded attorneys.

26. Although Huminski has not received the Court's intervention order as of the date of this writing, he heard that the Court mentioned his listing the State in a temporary restraining order which he intended to clarify once additional defendants were added in the forthcoming Amended Complaint that is being drafted by the Plaintiffs and Governor DeSantis will be at least one subject of the TRO when Huminski clarifies it.
27. This Court should recuse because it does not have sufficient knowledge of contempt as a *sui generis* common law offense under both Federal and State authority, thus, upon considering reconsideration or upon remand this Court will be unable to understand the issues in this case. This is evident from the Court's characterization of Huminski's *sui generis* common law cases as "criminal" in nature similar to a very misinformed jurist's quotes above and in the clerk-rejected papers. No Florida case exists whereby contempt in a civil case designated "CA" has ever been prosecuted in a State Court as a criminal case with the State injecting themselves as a plaintiff in a case such as Huminski v. Town of Gilbert, et al., 17-CA-421, Fl. 20th Circuit Court.
28. Huminski is not in possession of the aforementioned court-rejected papers nor the order denying intervention. He does possess the one page refusal to file letter from the Court. The Court is in possession of all Huminski's papers intended for filing and he was never served the order regarding intervention.

Prayer for Relief

WHEREFORE, the Court should reconsider denial of intervention and grant the disabled indigent litigants the same methods of communication with the Court that licensed attorneys enjoy, such as;

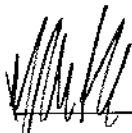
1. Cost free and travel free filing of court documents with a click of a mouse that would have prevented the instant decision of this Court that was rendered without documents that were authored and served 10 days prior to the instant ruling which, after lengthy copying and shipping, arrived at the Court on 5/24/2022. The disparity between the Court's treatment of the disabled indigent and licensed attorneys, prejudicing the disabled indigent, violates the Americans with Disabilities Act and embodies First Amendment concerns concerning access to the Courts. The Court and parties should also serve disabled indigents electronically pursuant to the ADA. Attached hereto as Exhibit "A" are true and correct copies of proof of copying at Best Value Copying in New York, Proof of shipping via UPS of papers for filing and a scan of this Courts envelope with the postmark containing the 1 page notice of rejection of filings.

And the Court should compel the clerk to file the papers Huminski sent to the court for filing that remain at the court and are not filed or docketed and are necessary to opine on intervention and for the forthcoming appeal to the Eleventh Circuit. The Court also should recuse because of inadequate knowledge of contempt, that presents prominently in Huminski's claims, and its classification as a *sui generis* common law offense neither a felony nor a misdemeanor under both Federal and Florida authority. This lack of judicial knowledge concerning contempt will prejudice Huminski in this proceeding and in potential remand.

Pursuant to the ADA this Court should also file the papers set forth in the State Courts which are identical to the papers that this Court refuses to file. See content at above links.

This Court should also issue an order to show cause as to why State actors should not be held in civil and/or criminal contempt of the United States Courts for continuing State litigation after the matter had been removed to the federal courts and securing a judgment forbidding Huminski's communication with the State of Florida government for life. A perpetual First Amendment restriction equivalent to the Plaintiffs' claims in the instant matter. 18 USC 241, 242

Sworn and Subscribed to before me on this 28th day of May, 2022 in Flagler Court, Florida.


Notary

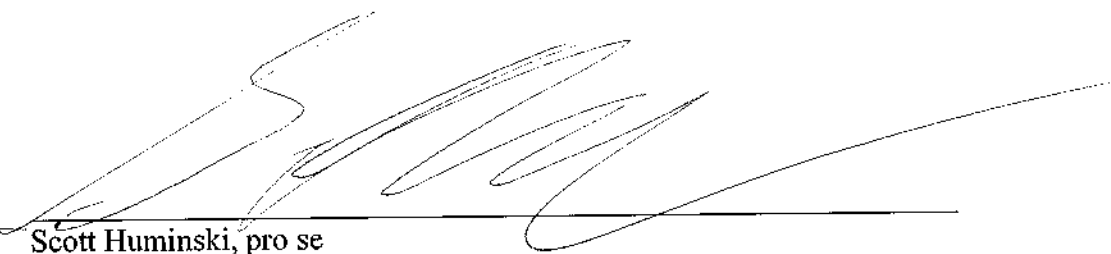
Kyle Rasmussen



KYLE RASMUSSEN
Notary Public
State of Florida
Comm# HH260959
Expires 5/4/2026

Exp. 05/04/2026

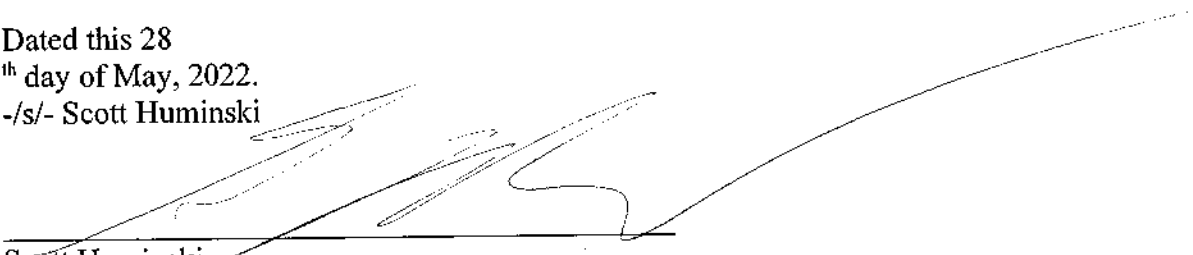
Dated at Palm Coast, Florida this 28th day of May, 2022.


Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_Huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the U.S. Mails and/or email and/or the e-filing system in this case.

Dated this 28th day of May, 2022.
-/s/- Scott Huminski


Scott Huminski

<attachments>

Exhibit “A”



scott huminski,

Thank you for your order from Best Value Copy. You can check the status of your order by logging into your account. If you have questions about your order, you can email us at customerservice@bestvaluecopy.com or call us at 1-888-307-4570.

Your shipping confirmation is below. Thank you again for your business.

**Your Shipment #000037332 for Order
#000047273**

Shipped By

Tracking Number

UPS:

1Z14636X0391822342



Your package has been delivered.

Delivery Date: Tuesday, 05/24/2022

Delivery Time: 12:03 PM

At the request of Anonymous, this notice is to confirm that the following shipment has been delivered.

Shipment Details

Tracking Number: 1Z013X530301546454

Ship To: TALLAHASSEE, FL 32301
US

UPS Service: UPS GROUND

Number of Packages: 1

Weight: 25.7 LBS

You have mail and packages arriving soon.

5/27/2022



**COMING TO YOUR MAILBOX
SOON.**

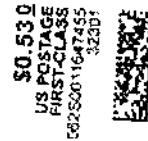


MAIL

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NORTHERN DISTRICT OF FLORIDA
OFFICE OF THE CLERK
111 NORTH ADAMS STREET, SUITE 322
TALLAHASSEE, FLORIDA 32301-7717
OFFICIAL BUSINESS

TALLAHASSEE, FL 323
25 MAY 2022 PM 2:1



Scott Huminski
Post Office Box 353820
Palm Coast, Florida 32135
Return of Documents

32135-382020

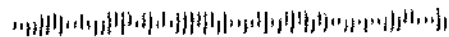


Exhibit “B”

Filing # 149219632 E-Filed 05/09/2022 03:14:39 PM

In The

Third District Court of Appeal

SCOTT HUMINSKI,) Number: 3d21-1920
APPELLANT,)
v.)
STATE OF FLORIDA, ET AL,)
APPELLEES.)

Notice of filing

NOW COMES, Appellant Scott Huminski ("Huminski"), and notices of filing of the documents attached hereto in Equality Florida, Et al. v. Desantis, Et al., 4:22-cv-00134-AW-MJF, United States District Court (Northern District of Florida).

Dated at Miami, Florida this 9th day of May, 2022.

-/S/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the e-filing system in this case.

Dated this 9th day of May, 2022.

-/s/- Scott Huminski

Scott Huminski

<attachments>

RECEIVED, 05/09/2022 03:15:23 PM, Clerk, Third District Court of Appeal

In The
United States District Court
Northern District of Florida

EQUALITY FLORIDA, ET AL,	)	Number: 4:22-cv-00134-AW-MJF
PLAINTIFFS,	)	
V.	)	
RONALD DESANTIS, ET AL,	)	
DEPENDANTS.	)	

SUGGESTION OF DEATH – ANTHONY KUNASEK, ESQ.

NOW COMES, Scott Huminski (“Huminski”), and, notices of the death of Anthony Kunasek, Esq. as follows:

Anthony Kunasek (deceased) after conducting a murder trial on Friday April 29, 2022 became informed that crimes he committed targeting the Federal and State courts were being considered for prosecution. On April 30, 2022 Mr. Kunasek committed suicide via a gunshot wound to the head which was investigated by the F.B.I..

The crimes Mr. Kunasek was confronting are the exact same issues that Governor DeSantis and Florida Ashley Moody continue to conspire together to cover up and ensure the results of the crimes of Mr. Kunasek remained permanent against Huminski including the lifetime speech prohibition requested by Mr. Kunasek and granted creating a virtual First Amendment Free Zone concerning Huminski’s core protected political expression to the State of Florida. A claim almost identical to the set of facts of Huminski v. Corsones, 396 F.3d 53 (2d Cir. 2004 amended 2005).

“The Notices Against Trespass in effect prohibit indefinitely any and all expressive activity in which Huminski might want to engage in and around Rutland state courthouses. These notices are thus pervasive enough to be viewed as creating a “First-Amendment-Free Zone” for Huminski alone in and around the Rutland courts. The defendants’ singling out of Huminski for exclusion, thereby permitting all others to engage in similar activity in and around the courts, suggests to us that the trespass notices are not reasonable. Such broad restrictions are generally frowned upon even in nonpublic forums. *Cf. Bd. of Airport Comm’rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 575, 107 S.Ct. 2568, 96 L.Ed.2d 500 (1987) (“We think it obvious that ... a ban [on First Amendment activities at an airport] cannot be justified even

Filing # 149474426 E-Filed 05/12/2022 01:49:06 PM

In The

Third District Court of Appeal

SCOTT HUMINSKI,) Number: 3d21-1920
APPELLANT,)
v.)
STATE OF FLORIDA, ET AL,)
APPELLEES.)

Notice of filing

NOW COMES, Appellant Scott Huminski ("Huminski"), and notices of filing of the documents attached hereto in Equality Florida, Et al. v. Desantis, Et al., 4:22-cv-00134-AW-MJF, United States District Court (Northern District of Florida).

Dated at Miami, Florida this 12th day of May, 2022.

-/S/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the e-filing system in this case.

Dated this 12th day of May, 2022.

-/s/- Scott Huminski

Scott Huminski

RECEIVED, 05/12/2022 01:49:23 PM, Clerk, Third District Court of Appeal

In The
United States District Court
Northern District of Florida

EQUALITY FLORIDA, ET AL,	)	Number: 4:22-cv-00134-AW-MJF
PLAINTIFFS,	)	
V.	)	
RONALD DESANTIS, ET AL,	)	
DEFENDANTS.	)	

NOTICE OF CORRESPONDENCE

NOW COMES, Scott Huminski ("Huminski"), and, notices of the below correspondence with the parties (the phrase "Criminal Division" referring to State v. Huminski, 17-mm-815, was unintentionally truncated from an image below, the parties have the full version):

From: scott huminski <s_huminski@live.com>
Sent: Thursday, May 12, 2022 1:18 PM
To: Christopher Sutter <Christopher.Sutter@myfloridalegal.com>; Katia Marques <Katia.Marques@myfloridalegal.com>; Martine Legagneur <Martine.Legagneur@myfloridalegal.com>; Eugene Steele <apiggg@yahoo.com>; info@lawstaff.info <info@lawstaff.info>; es@lawstaff.info <es@lawstaff.info>; Stacey Blume <stacey.blume@myfloridalegal.com>; rkapan@kaplanhecker.com <rkapan@kaplanhecker.com>; CStoll@ncirights.org <CStoll@ncirights.org>; liz@elizabethschwartz.com <liz@elizabethschwartz.com>; nadine@eqfl.org <nadine@eqfl.org>; geanny@eqfl.org <geanny@eqfl.org>; mark@eqfl.org <mark@eqfl.org>; nick@eqfl.org <nick@eqfl.org>; todd@eqfl.org <todd@eqfl.org>; mark@eqfl.org <mark@eqfl.org>; robin@eqfl.org <robin@eqfl.org>; robert@eqfl.org <robert@eqfl.org>; rene@eqfl.org <rene@eqfl.org>; andrew@eqfl.org <andrew@eqfl.org>; carlos@eqfl.org <carlos@eqfl.org>; don@eqfl.org <don@eqfl.org>; paul@eqfl.org <paul@eqfl.org>; stratton@eqfl.org <stratton@eqfl.org>; dan@eqfl.org <dan@eqfl.org>; david@eqfl.org <david@eqfl.org>; joe@eqfl.org <joe@eqfl.org>; brittany@eqfl.org <brittany@eqfl.org>; brandon@eqfl.org <brandon@eqfl.org>; michael@eqfl.org <michael@eqfl.org>; nikole@eqfl.org <nikole@eqfl.org>; jon@eqfl.org <jon@eqfl.org>; wesley@eqfl.org <wesley@eqfl.org>; yordanos@eqfl.org <yordanos@eqfl.org>; salvatore@eqfl.org <salvatore@eqfl.org>; benjamin@eqfl.org <benjamin@eqfl.org>; mary@eqfl.org <mary@eqfl.org>; de@eqfl.org <de@eqfl.org>; ian@eqfl.org <ian@eqfl.org>; Joel Valez-Stokes <joel.valez-stokes@browardpalmbeach.com>; jason.parsley@sfgn.com <jason.parsley@sfgn.com>; justin.wyse@sfgn.com <justin.wyse@sfgn.com>; lbrown@washblade.com <lbrown@washblade.com>; srutgers@washblade.com <srutgers@washblade.com>; bpitts@washblade.com <bpitts@washblade.com>; jhickling@washblade.com <jhickling@washblade.com>; prockstroh@washblade.com <prockstroh@washblade.com>; tmasters@losangelesblade.com <tmasters@losangelesblade.com>; swong@losangelesblade.com <swong@losangelesblade.com>; Scott Wazlowski

Filing # 149581361 E-Filed 05/13/2022 04:25:18 PM

In The

Third District Court of Appeal

SCOTT HUMINSKI,) Number: 3d21-1920
APPELLANT,)
v.)
STATE OF FLORIDA, ET AL,)
APPELLEES.)

Notice of filing

NOW COMES, Appellant Scott Huminski ("Huminski"), and notices of filing of the documents attached hereto in Equality Florida, Et al. v. Desantis, Et al., 4:22-cv-00134-AW-MJF, United States District Court (Northern District of Florida).

Dated at Miami, Florida this 13th day of May, 2022.

-/S/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the e-filing system in this case.

Dated this 13th day of May, 2022.

-/s/- Scott Huminski

Scott Huminski

<attachments>

RECEIVED, 05/13/2022 04:30:25 PM, Clerk, Third District Court of Appeal

In The
United States District Court
Northern District of Florida

EQUALITY FLORIDA, ET AL,	)	Number: 4:22-cv-00134-AW-MJF
PLAINTIFFS,	)	
V.	)	
RONALD DESANTIS, ET AL,	)	
DEFENDANTS.	)	

Motion to Take Judicial Notice

NOW COMES, Scott Huminski ("Huminski"), and moves that the Court take judicial notice pursuant to FED. R. EVID. 201 of the record on appeal Huminski v. State, 2D19-1914 (Fl. Second District Court of Appeal, 2019) attached hereto as Exhibit "A" concerning contempt allegedly occurring in the 20th Circuit Court whereby the 20th Circuit attempted to hijack the appeal by hearing the appeal of a contempt case involving the 20th Circuit by the 20th Circuit, but, the hijacking was thwarted by the 2nd District Court of Appeal who properly asserted jurisdiction after the 20th Circuit immediately dismissed the appeal with one sentence. For obvious reasons the 20th Circuit wanted to bury the issues that Huminski has proffered in the instant matter. Courthouse crime is very embarrassing and requires a cover-up.

Initially, this scenario presents the bizarre scenario that contempt allegedly occurs in the 20th Circuit Court and then the 20th Circuit became the appellate Court with it being the alleged victim of the contempt. How this 20th Circuit Contempt wiggled its way into a Court of inferior jurisdiction, Lee Court Court, State v. Huminski, 17-mm-815 was via forgery of court orders by prosecutor Anthony Kunasek and others which Huminski has already discussed extensively in previous papers filed in this matter. Mr. Kunasek took his life 30 days after his forgery and other conduct became a documented issue in the instant matter.

The record on appeal supports Huminski's contention that a custom, policy, practice and procedure exists through the entire State government of the State of Florida not only has an utter disdain for federal law especially the First Amendment, Bill of Rights generally, Title 11, ADA, Title 18 and harbors an intense disdain and disrespect for the powers, authority, jurisdiction of the Federal Courts leading to wholesale violations of federally secured rights, immunities and protections. State Courts simply can not tell the federal courts to pound sand.

Filing # 150206916 E-Filed 05/24/2022 02:21:12 PM

In The

Third District Court of Appeal

SCOTT HUMINSKI,) Number: 3d21-1920
APPELLANT,)
v.)
STATE OF FLORIDA, ET AL,)
APPELLEES.)

Notice of filing

NOW COMES, Appellant Scott Huminski ("Huminski"), and notices of filing of the documents attached hereto in Equality Florida, Et al. v. Desantis, Et al., 4:22-cv-00134-AW-MJF, United States District Court (Northern District of Florida).

Dated at Miami, Florida this 24th day of May, 2022.

-/S/- Scott Huminski

Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_huminski@live.com

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the e-filing system in this case.

Dated this 24th day of May, 2022.

-/s/- Scott Huminski

Scott Huminski

<attachments>

RECEIVED, 05/24/2022 02:22:49 PM, Clerk, Third District Court of Appeal

In The
United States District Court
Northern District of Florida

EQUALITY FLORIDA, ET AL,	)	Number: 4:22-cv-00134-AW-MJF
PLAINTIFFS,	)	
V.	)	
RONALD DESANTIS, ET AL,	)	
DEFENDANTS.	)	

Motion to Take Judicial Notice

NOW COMES, Scott Huminski ("Huminski"), and moves that the Court take judicial notice pursuant to FED. R. EVID. 201 of the opinion entered in NetChoice, LLC v. Attorney General, State of Florida, 21-12355 (11th Cir. 2022). Attached hereto as Exhibit "A" is a true and correct copy of the NetChoice opinion enjoining another State of Florida law violative of the First Amendment.

The NetChoice opinion supports Huminski's contention that the State of Florida operates with a completely depraved disdain for the First Amendment and will chose a course of conduct to silence speech, if the State disagrees or is uncomfortable with said speech and violate any and all provisions of federal law to accomplish its depraved corrupt notions/philosophy regarding free speech. The willingness of Governor DeSantis and Ashley Moody, Esq. in 2021 and 2022 to engage in a course of conduct to maintain Huminski's lifetime banishment (Huminski v. DeSantis, et al., 21-CA-18435, FL 11th Judicial Circuit, Huminski v. DeSantis, et al., 3d21-1920, FL 3rd District Court of Appeal) concerning communication with the entire State of Florida government despite him being a citizen and resident of Florida reveals the intent of the State with regard to federal law and the Bill of Rights. Forgery of a Lee County Court order (State v. Huminski, 17-mm-815) is just one technique used by the State to silence dissent and core protected political expression. Apparently no provision of federal law will stop the State's quest to undermine the First Amendment. Even removal to federal court didn't stop the State of Florida from plowing ahead the State v. Huminski. In the mindset of Florida, federal law exists to be ignored and violated and this philosophy rises to the highest levels of State government.

Considering the State of Florida's position on the First Amendment, the only possible solution for this once confederate State may be to secede as it did 150 years ago concerning the

Exhibit “C”

Notice of Service of Court Documents**Filing Information**

Filing #: 149581361
Filing Time: 05/13/2022 04:25:18 PM ET
Filer: Scott Alan Huminsky 239-300-6656
Court: Third District Court of Appeal
Case #: 3D2021-1920
Court Case #: 3D2021-1920
Case Style: SCOTT HUMINSKI, vs STATE OF FLORIDA, et al.,

Documents

Title	File
Other Notice	merged dca notice of filing_compressed 55mb.pdf

E-service recipients selected for service:

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Christopher Michael Sutter	christopher.sutter@myfloridalegal.com
	katia.marques@myfloridalegal.com
	martine.legagneur@myfloridalegal.com
Eugene Steele	apiggg@yahoo.com
	info@lawstaff.info
	es@lawstaff.info
Scott Huminski	s_huminski@live.com
Stacey Blume	Stacey.Blume@myfloridalegal.com
Scott Alan Huminsky	scott.huminski@gmail.com
Paralegal	info@lawstaff.info
Andrew Greenlee	andrew@andrewgreenleelaw.com
Michael Brownlee	mbrownlee@brownleelawfirmpa.com
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S. Stoll	CStoll@ncrlrights.org
L. Schwartz	liz@elizabethschwartz.com
B. Faruqi	Bilal.Faruqi@myfloridalegal.com
D. Bell	Daniel.Bell@myfloridalegal.com

C. Whitaker	Henry.Whitaker@myfloridalegal.com
S Barday	SBarday@gibsondunn.com
A. Patel	Anita.Patel@myfloridalegal.com
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SAO Service	ServiceSAO-LEE@sao.cjis20.org
Oag Serve	oag.civil.eserve@myfloridalegal.com
Crim App	crimappTPA@myfloridalegal.com
D Bell	Daniel.Bell@myfloridalegal.com
E Jackson	ejackson@johnsonjackson.com
A Gallagher	agallagher@johnsonjackson.com
L Stillwell	lstillwell@johnsonjackson.com
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J Madrigal	jordanmadrigal@dadeschools.net
D Marsey	dmarsey@rumberger.com
J Grosholz	jgrosholz@rumberger.com
D Orlando	docketingorlando@rumberger.com
b harris	bharris@lawfla.com
a hopkins	ahopkins@lawfla.com
j dean	jdean@lawfla.com
c carstens	ccarstens@lawfla.com

J Grosholz	jgrosholz@rumberger.com
D Orlando	docketingorlando@rumberger.com
b harris	bharris@lawfla.com
a hopkins	ahopkins@lawfla.com
j dean	jdean@lawfla.com
c carstens	ccarstens@lawfla.com
m fuqua	mfugua@fmc.legal
c crowley	ccrowleylaw@gmail.com
c wor	cworcester@sao.cjis20.org

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No Matching Entries	

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The Florida Courts E-Filing Portal

Exhibit “D”

JESSICA J. LYUBLANOVITS
CLERK OF COURT
100 NORTH PALAFOX STREET
PENSACOLA, FLORIDA 32502-5658
850.435.8440
850.433.5972 FAX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
OFFICE OF THE CLERK

ELIZABETH LAWRENCE
CHIEF DEPUTY CLERK
111 N. ADAMS STREET
TALLAHASSEE, FLORIDA 32301-7717
850.521.3501
850.521.3656 FAX

Visit our web site at www.find.uscourts.gov

Reply to: Tallahassee Division

May 25, 2022

Scott Huminski

P.O. Box 353820

Palm Coast, FL 32135

Subject: 4:22-cv-00134-AW-MJF EQUALITY FLORIDA et al v. DESANTIS et al

Dear Mr. Huminski :

The Clerk's Office received today for filing two motions to take judicial notice, notice of correspondence and a suggestion of death as well voluminous exhibits.

In a recent order of the Court, enclosed, it denied your request to intervene and so you are not a party in the subject case.

Therefore the Clerk's office is returning these voluminous documents to you..

Sincerely,

JESSICA J. LYUBLANOVITS, Clerk

s/ Blair Patton

by Blair Patton
Deputy Clerk

The mission of the Office of the Clerk of the Northern District of Florida is to provide superior service to the public and the Court.

Gainesville Division
401 SE 1st Avenue, STE 243
Gainesville, Florida 32601
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Pensacola Division
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Pensacola, Florida 32502-5658
850.435.8440
850.433.5972 FAX

Tallahassee Division
111 N. Adams Street
Tallahassee, Florida 32301-7717
850.521.3501
850.521.3656 FAX

Panama City Division
30 W. Government Street
Panama City, Florida 32401
850.769.4556
850.769.7528 FAX

Exhibit “E”

From: scott huminski <s_huminski@live.com>

Sent: Tuesday, May 24, 2022 8:59 AM

To: Christopher Sutter <Christopher.Sutter@myfloridalegal.com>; Katia Marques <Katia.Marques@myfloridalegal.com>; Martine Legagneur <Martine.Legagneur@myfloridalegal.com>; Eugene Steele <apiggg@yahoo.com>; info@lawstaff.info <info@lawstaff.info>; es@lawstaff.info <es@lawstaff.info>; Stacey Blume <stacey.blume@myfloridalegal.com>; rkapan@kaplanhecker.com <rkapan@kaplanhecker.com>; CStoll@nclrights.org <CStoll@nclrights.org>; liz@elizabethschwartz.com <liz@elizabethschwartz.com>; nadine@eqfl.org <nadine@eqfl.org>; geanny@eqfl.org <geanny@eqfl.org>; mark@eqfl.org <mark@eqfl.org>; nick@eqfl.org <nick@eqfl.org>; todd@eqfl.org <todd@eqfl.org>; mark@eqfl.org <mark@eqfl.org>; robin@eqfl.org <robin@eqfl.org>; robert@eqfl.org <robert@eqfl.org>; rene@eqfl.org <rene@eqfl.org>; andrew@eqfl.org <andrew@eqfl.org>; carlos@eqfl.org <carlos@eqfl.org>; don@eqfl.org <don@eqfl.org>; paul@eqfl.org <paul@eqfl.org>; stratton@eqfl.org <stratton@eqfl.org>; dan@eqfl.org <dan@eqfl.org>; david@eqfl.org <david@eqfl.org>; joe@eqfl.org <joe@eqfl.org>; brittany@eqfl.org <brittany@eqfl.org>; brandon@eqfl.org <brandon@eqfl.org>; michael@eqfl.org <michael@eqfl.org>; nikole@eqfl.org <nikole@eqfl.org>; jon@eqfl.org <jon@eqfl.org>; wesley@eqfl.org <wesley@eqfl.org>; yordanos@eqfl.org <yordanos@eqfl.org>; salvatore@eqfl.org <salvatore@eqfl.org>; benjamin@eqfl.org <benjamin@eqfl.org>; mary@eqfl.org <mary@eqfl.org>; de@eqfl.org <de@eqfl.org>; ian@eqfl.org <ian@eqfl.org>; Joel Valez-Stokes <joel.valez-stokes@browardpalmbeach.com>; jason.parsley@sfgn.com <jason.parsley@sfgn.com>; justin.wyse@sfgn.com <justin.wyse@sfgn.com>; lbrown@washblade.com <lbrown@washblade.com>; srutgers@washblade.com <srutgers@washblade.com>; bpitts@washblade.com <bpitts@washblade.com>; jhickling@washblade.com <jhickling@washblade.com>; prockstroh@washblade.com <prockstroh@washblade.com>; tmasters@losangelesblade.com <tmasters@losangelesblade.com>; swong@losangelesblade.com <swong@losangelesblade.com>; Scott Wazlowski <s.wazlowski@ebar.com>; m.yamashita@ebar.com <m.yamashita@ebar.com>; Bilal.Faruqui@myfloridalegal.com <Bilal.Faruqui@myfloridalegal.com>; Daniel.Bell@myfloridalegal.com <Daniel.Bell@myfloridalegal.com>; Henry.Whitaker@myfloridalegal.com <Henry.Whitaker@myfloridalegal.com>; SBarday@gibsondunn.com <SBarday@gibsondunn.com>; Anita.Patel@myfloridalegal.com <Anita.Patel@myfloridalegal.com>; ComplexLitigation.eservice@myfloridalegal.com <ComplexLitigation.eservice@myfloridalegal.com>; ServiceSAO-LEE@sao.cjis20.org <ServiceSAO-LEE@sao.cjis20.org>; oag.civil.eserve@myfloridalegal.com <oag.civil.eserve@myfloridalegal.com>; crimappTPA@myfloridalegal.com <crimappTPA@myfloridalegal.com>; Daniel.Bell@myfloridalegal.com <Daniel.Bell@myfloridalegal.com>; ejackson@johnsonjackson.com <ejackson@johnsonjackson.com>; agallagher@johnsonjackson.com <agallagher@johnsonjackson.com>; lstillwell@johnsonjackson.com <lstillwell@johnsonjackson.com>; kharris@johnsonjackson.com <kharris@johnsonjackson.com>; walter.harvey@dadeschools.net <walter.harvey@dadeschools.net>; jordanmadrigal@dadeschools.net <jordanmadrigal@dadeschools.net>; dmarsey@rumberger.com <dmarsey@rumberger.com>; jgrosholz@rumberger.com <jgrosholz@rumberger.com>; docketingorlando@rumberger.com <docketingorlando@rumberger.com>; bharris@lawfla.com <bharris@lawfla.com>; ahopkins@lawfla.com <ahopkins@lawfla.com>; jdean@lawfla.com <jdean@lawfla.com>; ccarstens@lawfla.com <ccarstens@lawfla.com>; mfuqua@fmc.legal <mfuqua@fmc.legal>; kworcester@sao.cjis20.org <kworcester@sao.cjis20.org>; jwasserkrug@mwe.com <jwasserkrug@mwe.com>; ejackson@johnsonjackson.com <ejackson@johnsonjackson.com>; agallagher@johnsonjackson.com <agallagher@johnsonjackson.com>; Andrew Kadah <askadah09@gmail.com>; sandymodell@aol.com <sandymodell@aol.com>

Subject: Equality Florida v. DeSantis correspondence

The below content from an email of yesterday was sent to the entire staff at the Lee Court complex and discussed arraignment in the communication banishment case that sought and

accomplished a lifetime communication banishment between proposed intervenor Huminski and the entire State of Florida in perpetuity.

Co-conspirators to this criminal activity clearly involve the participation of a quite delusional Judge Krier, the late prosecutor Kunasek and the public defender for the 20th Circuit. All were eager to advance the case in State court in spite of its removal to the U.S. District Court (Bankruptcy Unit).

DeSantis and Ashley Moody fought to continue collection activities related to the void ab initio case State v. Huminski in 2021-2022 on a case that was commenced to evade jurisdiction of the Federal Courts. That commencement was in the absence of any and all jurisdiction because of the removal. Further, after the forgery of a court order, there was no service of the forged court order and Lee County Court had no subject matter jurisdiction to hear Circuit Court contempt. *South Dade Farms v. Peters*, 88 So. 2d 891 - Fla: Supreme Court 1956

"In the opinion last cited this court adopted the language of the Supreme Court of the United States in the leading case of *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 31 S.Ct. 492, 501, 55 L.Ed. 797, from which we quote also the following:

"There has been general recognition of the fact that the courts are clothed with this power, and must be authorized to exercise it without referring the issues of fact or law to another tribunal or to a jury in the same tribunal. "

Intense and obvious corruption, The Goal - to **SILENCE ALL SPEECH TO THE FLORIDA GOVERNMENT IN PERPETUITY**, a situation that continues to this day. The issue was not only removed, there was no service and the "transfer" from Circuit to County court constituted a loss of subject matter jurisdiction. Transfer of contempt from a court of general jurisdiction to a court of limited jurisdiction is unknown in any United States jurisdiction. An obscene level of corruption in Florida concerning the obsession with silencing core protected political expression. Afforded the highest level of protection under the first amendment.

So in the below email are transcript excerpts of the "criminal arraignment" of 6/29/2017 in Huminski v. Town of Gilbert, et al, a case that had been removed to the Bankruptcy Court 3 days prior, See pacer excerpts,

Name	Case No.	Case Title	Chapter / Lead BK case	Date Filed	Party Role	Date Closed
Huminski, Scott Alan (pty) (2 cases)	<u>2:17-ap-00509-FMD</u>	Huminski v. Town of Gilbert, AZ et al	Lead BK: 2:17-bk-03658-FMD Scott Alan Huminski	06/26/17	Plaintiff	08/24/17
	<u>2:17-bk-03658-FMD</u>	Scott Alan Huminski	7	04/28/17	Debtor	08/24/17



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U.S. Bankruptcy
Middle District of Florida
Adversary Proceeding #: 2:1

Assigned to: Chief Judge Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski
Lead BK Chapter: 7
Show Associated Cases

Demand:

Nature[s] of Suit: 01 Determination of removed claim or cause

Plaintiff

Scott Alan Huminski
4544 Kingfish Street
Bonita Springs, FL 34134
39-300-6656
SN / ITIN: xxx-xx-4327

----- EMAIL to Courthouse staff and SA office

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Kamo@ca.cjis20.org <Kamo@ca.cjis20.org>; Jatkis@ca.cjis20.org <Jatkis@ca.cjis20.org>;
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 6 2017 10:10> <criminal.division@usdoj.gov>; Bilal.Faruqui@myfloridalegal.com
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law.com>

Subject: Judge Krier responsible for Kunasek's SUICIDE, the wrong person died.

Kunasek stipulating to banishment from communication with the entire State of florida early on, I told Kathleen Smith that this was illegal and unconstitutional. First off, there are no terms of release in a sui generis common law case - contempt. The speech banishment was made final and permanent at final judgment. Criminally actionable to this day under the continuing violation/offense doctrine. Suicide is a cowards way out for those who can not take the punishment for their crimes like a man and own up to the crimes.

STATE OF FLORIDA

CASE NO. 17-MM-000815 JRA

vs.

SCOTT ALAN HUMINSKI

STIPULATED MOTION TO MODIFY CONDITIONS OF PRETRIAL RELEASE

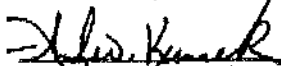
COMES NOW, the Defendant, by and through the Office of the Public Defender, and the State Attorney and jointly stipulate that the Defendant's pretrial release conditions be modified, and states the following as grounds:

1. On June 29, 2017, Mr. Huminski was placed on pretrial supervision as part of indirect criminal contempt proceedings.
2. Mr. Huminski's conditions included (but were not limited to) no contact with the Lee County Sheriff's Office "except through their legal counsel, unless said contact is initiated by the Sheriff's Office, such as if SCOTT HUMINSKI is arrested or stopped for a traffic violation." Order on Arraignment, dated July 7, 2017.
3. The Lee County Sheriff's Office provides security for the Lee County Justice Center and is the default law enforcement agency in the City of Bonita Springs, where Mr. Huminski lives.
4. Mr. Huminski's conditions should be modified so that he shall not have any contact with the Lee County Sheriff's Office except through their legal counsel unless said contact:
 - a. is initiated by the Sheriff's Office, such as if Mr. Huminski is arrested or stopped for a traffic violation;
 - b. is made in the process of attending and participating in court dates for his criminal case; or
 - c. is necessary to report a crime or other emergency normally referred to the Lee County Sheriff's Office.

DATED this 20th day of September, 2017.

STEPHEN B. RUSSELL

State Attorney



Anthony W. Kunasek

Assistant State Attorney

KATHLEEN A. SMITH

Public Defender



Kevin John Sarlo

Assistant Public Defender

Here is where Krier, Kunasek and the Public pretender were discussing the forgery, pre-forgery. Even Kunasek admitted alleged contempt in a civil case does not get transferred to County Court. Kunasek does mention contempt arising in a "DR" case, contrarily, Huminski v. Town of Gilbert was a "CA" case, straight civil case. Krier admits here that somebody had to ask a clerk to forge the County Court order. Mr. Kunasek's fun and games.

22 Are they gonna assign another case number to
23 this case? I don't know how they're gonna do
24 that.
25 MR. KUNASEK: My experience with orders to

eFiled Lee County Clerk of Courts Page 5

Page 2

6
1 show cause in DR court, Your Honor, has led me to
2 believe that that normally does not happen.
3 We'll just stay under this case number.
4 MR. SARLO: The case number that's on the
5 order is a civil case number.
6 THE COURT: Right because that's the only
7 case number I have.

8 MR. SARLO: The clerk very well may ask us --
9 THE COURT: I know in Collier County, because
10 I've done a couple of these proceedings in
11 Collier, they do open a new file. So, if you
12 want that to happen, I would think that
13 somebody's gotta ask -- ask the Clerk to do that.
14 Okay. So, let's see. Middle of August is
15 okay for everybody?
16 MR. KUNASEK: Yes, Your Honor.
17 THE DEFENDANT: No.
18 THE COURT: Could we do it at --
19 THE DEFENDANT: This case has been removed to
20 bankruptcy court, so I'm not good with that.
21 THE COURT: Pardon me?
22 THE DEFENDANT: This case has been removed to
23 bankruptcy court --
24 THE COURT: This case hasn't been removed to
25 any place, Mr. Huminski.

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7
1 THE DEFENDANT: Under bankruptcy rule 9027 --
2 THE COURT: Mr. Huminski, A, you're not a
3 lawyer and, B, this case doesn't get removed to
4 bankruptcy court. That's not how the law works.
5 Okay. You need to --

23 THE COURT: Yeah, 17-CA-421.

24 And, also, Madame Clerk, would you please
25 check with the clerk's office because, again, in

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23

1 Collier, they give -- they set up a new file.
2 It's a little bit difficult to have a civil -- a
3 criminal proceeding in a civil case. So, if you
4 could check with somebody about that, maybe we
5 can get that straightened out, too.

6 THE DEFENDANT: Your Honor, I'd like

7 permission to forward the rules of the bankruptcy
8 court to my attorney, so he can forward them to
9 you concerning the removal.

10 THE COURT: I'm not a bankruptcy court judge,
11 so if your attorney thinks that that should be
12 done in this case, well, I'm certain he can --

13 THE DEFENDANT: It's a federal court, so it
14 has jurisdiction everywhere.

15 THE COURT: Again, sir, this is not a
16 bankruptcy court. You can forward them to your
17 attorney and your attorney can decide whether or
18 not to forward them to me.

Yes, Crazy Krier, you are not a federal court, but, federal courts implementing federal law is the "Law of the Land" under the Supremacy Clause. Removal ends your ignorant vendetta in the "Wisdom" from the legal idiot Krier. This isn't incompetence, it is mental disease. Federal removal is a self-executing procedure equivalent to a federal court order. This is indirect criminal contempt of the federal courts and congress.

Yes, Kunasek was right, contempt doesn't get transferred to a lower court. So why did he go ahead and engage in forging a County Court order to evade federal jurisdiction of the U.S. District Court (Bankruptcy Unit). Notice the statute involved in the charges and then the content of the statute. Lee County Court had no [exercise of their] "Civil Jurisdiction". F.S. 900.04 There was no County Court Civil case. Thus, "no exercise of its civil jurisdiction". Courthouse crime on top of crime by the State criminal justice system. I wouldn't be surprised if there are a dozen courthouse criminals involved in this corrupt courthouse enterprise intending to shake down costs, fees and fines from the innocent. A RICO violation. A pot pourri of courthouse criminals all working together to obtain a corrupt goal.



17-MM-000815 : State of Florida vs Huminski, Scott A

Case Type:	Misdemeanor	Date Filed:	06/30/2017
Location:	County Criminal	UCN:	362017MM000815000A
Judge:	James R Adams	Status:	Closed
Citation Number:	Misdemeanor	Appear By Date:	

Parties				
Name	DOB	Type	Attorney	Atty Phone
State of Florida		Plaintiff	Anthony Kunasek	239-533-100
Scott Huminski	12/01/1959	Defendant		

Charge Details			
Offense Date	Charge	Plea	Arrest Disposition
06/06/2017	1. CONTEMPT OF COURT CIRCUIT OR COUNTY Statute: 900.04 No Charge - No Level	3/16/2018 Pled Not Guilty	3/16/2018 Non Jury Trial Adjudicated Guilty

Ok, FS 900.04 below. Not defining contempt as a misdemeanor. Who entered the false information on the docket above to justify a criminal misdemeanor prosecution. Another courthouse criminal.

[Title XLVII](#)
[Chapter 900](#)
[View Entire Chapter](#)
 CRIMINAL PROCEDURE AND CORRECTIONS GENERAL PROVISIONS

900.04 Contempts.—Said courts, in the exercise of their criminal jurisdiction may punish for contempts as in the exercise of their civil jurisdiction, and the county courts shall possess, in this respect, the same powers as the circuit courts.

History.—RS 2794; GS 3844; RS 5939; CGL 8205; s. 3, ch. 70-339; s. 34, ch. 73-334.

Note.—Former s. 932.03.

Krier is the gift that keeps giving. Here is Kunasek informing the judge to have a little highly illegal fun with the case. Thank heavens Kunasek is not practicing law. He was dangerous and an enabler of criminal judicial conduct.

10 THE COURT: Okay. We're here on an order to
11 show cause. This is essentially an arraignment
12 proceeding today. So, I think the things that we
13 have to do today are set court dates for various
14 proceedings, as well as address issues of bond
15 and/or pretrial release, am I correct?

16 MR. SARLO: Yes, Judge.

17 THE COURT: Okay. So, first thing is bond
18 and/or pretrial release. Any arguments from
19 anybody?

20 MR. KUNASEK: Judge, the State will defer to
21 the Court with respect to that. I know there was
22 an issue with serving him with the initial order
23 to show cause. So, his availability may be an
24 issue and the Court's well aware of that more
25 than I am, so I will defer to the Court with

Here is Krier setting forth imaginary law from an imaginary statute. Delusional. Her mental disease is on full display in this complete detachment from reality.

2 THE COURT: My understanding is these
3 proceedings there's two different ways that the
4 State can proceed, one is with a -- a maximum of,
5 I think, 59 days in jail count, which means
6 there's no jury trial and then the second option
7 is for the State to proceed as a second degree
8 misdemeanor, I guess, with a maximum of just
9 under six months in jail, which requires a jury
10 trial. Does the State know how it's gonna be
11 proceeding with this?

12 Haven't decided yet? Okay. Well, at some
13 point I'm gonna need a decision. We can probably
14 address that at case management. I mean, despite
15 the fact that I prepared and signed the order to
16 show cause I can't prosecute a case, so it's the
17 State that's gotta prosecute the case. So, you
18 guys can just tell me at case management if

Kathleen Smith, PD going along with the criminal conduct. Setting a trial in a case that has been removed to federal court. Also a moron.

7 THE COURT: Okay. Do you want to wait and
8 set the trial at that time?

9 MR. SARLO: Yes, Your Honor.

10 THE COURT: Okay. And, then, I'm assuming,
11 also, if you have any motions that you want to
12 file, that you can just file those and then just
13 call my office for a time.

14 You're probably gonna need to call the office
15 because my regular JAC system is, you know, I'm
16 generally in the sill {phonetic spelling}
17 division. I think it might be weirder for you to
18 try to get on my regular motion calendar. So, if
19 you have motions that need to be addressed by the
20 Court, then you can just call my office and get
21 hearing time. Okay.

Kunasek going along with lunatic Krier

24 THE COURT: Okay. Now, I have to consider
25 issues of bond and/or pretrial release. I have a

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10
1 couple of concerns. Now, first of all, let me
2 just review with you what my understanding of the
3 law is, which is if I set a bond then I don't get
4 to set any terms of pretrial release. If I set a
5 pretrial release and I set terms, then I don't
6 get to set a bond, unless, of course, he violates
7 his terms. Is that accurate?

8 MR. KUNASEK: That's how I understand it.

9 THE COURT: Okay.

Kathleen Smith going along with the illegal
antics. No Mr. Sarlo, there is no pre-trial
release related to F.S. 900.04, it is not a
statutory misdemeanor nor felony. Another
member of the courthouse crime cartel.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

RONALD D. DESANTIS, in his
official capacity as Governor of
Florida, et al.,

Defendants.

No. 4:22-cv-00134 (AW) (MJF)

**REPORT OF THE PARTIES' PLANNING MEETING AND
PROPOSED DISCOVERY PLAN**

Pursuant to Fed. R. Civ. Pro. 26(f), N.D. Fla. Local R. 16.1, and Paragraph 3 of this Court's May 13, 2022 Initial Scheduling Order (ECF No. 44 (the "Scheduling Order")), Plaintiffs Equality Florida, Family Equality, M.A., S.S., Zander Moricz, Lindsay McClelland, Jane Doe, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice, Lourdes Casares, Kimberly Feinberg, Lindsey Bingham Shook, Anh Volmer, Scott Berg, and Myndee Washington (together, "Plaintiffs") and Defendants Ronald D. DeSantis, Florida State Board of Education, Thomas R. Grady, Ben Gibson, Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, Joe York, Jacob Oliva, Florida Department of Education, School Board of Manatee County, School Board of Sarasota County, School Board of Miami-Dade County, and St. Johns County School Board (together, "Defendants"), respectfully submit this

Joint Rule 26(f) Scheduling Report and Proposed Discovery Plan. Counsel for Plaintiffs and counsel for Defendants conferred on June 1, 2022, at 11:30 a.m. via telephone for the purpose of complying with the requirements of Rule 26(f).¹

I. NATURE OF THE CLAIMS AND DEFENSES. Plaintiffs assert that H.B. 1557 facially and as applied by Defendants violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment; the First Amendment; and Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688. Plaintiffs seek declaratory and injunctive relief, as well as damages. Defendants plan to move to dismiss the First Amended Complaint.

II. MOTION TO DISMISS. Pursuant to the Scheduling Order, Defendants will file any motion(s) to dismiss no later than **June 27, 2022**. The Parties have further stipulated and agreed, and jointly request, that Plaintiffs will have until July 27, 2022 to oppose any such motions, and Defendants will have until August 10, 2022 to reply. Although Defendants otherwise agree to the schedule proposed below, they reserve their right to seek a stay of discovery pending the outcome of their motion(s) to dismiss.

¹ Broward County School Board, Orange County School Board, and Pasco County School Board were added as Defendants in the First Amended Complaint, which Plaintiffs filed on May 25, 2022, and served on each of these new Defendants on May 31, 2022. To the extent that Plaintiffs had contact information for counsel to the new Defendants, Plaintiffs provided notice of the Parties' planned Rule 26(f) conference as well. Nevertheless, the new Defendants did not participate in the Rule 26(f) conference (which was held on the last date permitted by the Court's Scheduling Order).

III. JOINDER OF PARTIES AND FURTHER AMENDMENTS. Pursuant to this Court's Order, ECF No. 33, the deadline for filing an amended complaint and joining any new defendants was May 25, 2022. Plaintiffs filed a First Amended Complaint (ECF 47) on May 25, 2022.

IV. DISCOVERY PLAN. Plaintiffs believe that discovery will be needed on factual matters related to Plaintiffs' claims against Defendants as alleged in the First Amended Complaint, as well as any defenses raised by Defendants in their Answers and Affirmative Defenses. Plaintiffs have written to Defendants with respect to document retention and preservation issues, and Defendants have assured Plaintiffs that all Defendants (and their agents) are preserving relevant documents in accordance with Florida public records laws, including with respect to both official and personal accounts and devices.

In an effort to conduct discovery efficiently and ensure that the Parties remain on track with the schedule set by the Court, Plaintiffs proposed an interim deadline for service of initial discovery requests (by June 17), a shortened period for service of responses and objections (by June 30), and an interim deadline for substantial completion of document production (by August 17). Defendants believe that proposed schedule is impracticable and that the default deadlines set forth in the Federal Rules of Civil Procedure should govern these issues. If Plaintiffs wish to serve their initial discovery requests mere days after the parties' initial disclosures

are due (on June 15), they are free to do so. But there is no reason Defendants should be bound by any such deadline. Nor is a mere 13 days sufficient to respond to initial discovery requests. And having not yet seen Plaintiffs' discovery requests or drafted their own, Defendants cannot agree in advance to the completion of document production months before the discovery cutoff. Defendants do not object to the November 4, 2022 deadline for the close of all discovery.

The Parties note that discovery has commenced pursuant to Paragraph 7 of the Schedule Order, and jointly and respectfully propose the following discovery plan:

- a. The Parties will exchange the initial disclosures required by Rule 26(a)(1) no later than **June 15, 2022**, in accordance with the Scheduling Order.
- b. The Parties agree that the maximum number of interrogatories will be governed by the number allowed by Rule 33 of the Federal Rules of Civil Procedure, and that each side shall have a total number of depositions equal to the number of parties on the other side. In addition, each party shall have the opportunity to depose any fact or expert witness who submits an affidavit in connection with a motion for summary judgment or who will

testify at trial. The Parties further agree to the following number of requests for admission:

- 30 total for the Plaintiffs,
- 30 total for the State Defendants, and
- 5 for each School Board Defendant.

c. Opening expert reports shall be submitted by **September 16, 2022**.

d. Motions to compel discovery shall be filed by **October 5, 2022**.

e. Rebuttal expert reports shall be submitted by **October 14, 2022**.

f. All discovery, fact and expert, will be completed no later than **November 4, 2022**, in accordance with Paragraph 8 of the Scheduling Order.

g. No other changes should be made at this time to the limitations on discovery imposed under the Federal Rules of Civil Procedure, or the Local Rules of the Northern District of Florida, or otherwise.

V. DISPOSITIVE MOTIONS. The parties have conferred and jointly propose the following schedule for the submission and briefing of dispositive motions. Dispositive motions, including Summary Judgment and *Daubert* motions, will be filed no later than November 11, 2022. Any opposition to a dispositive motion will be filed no later than December 9, 2022. Any reply to a dispositive motion will be filed no later than December 23, 2022.

VI. PRETRIAL DISCLOSURES. In accordance with Fed. R. Civ. P. 26(a)(3)(B) and Paragraph 6(c) of the Scheduling Order, the deadline for pretrial disclosures is January 14, 2023. Any objections to pretrial disclosures must be made no later than January 28, 2023.

VII. TRIAL. Pursuant to the Scheduling Order, trial will be during the two-week period that begins on February 13, 2023.

VIII. STATUS AND LIKELIHOOD OF SETTLEMENT. The Parties have discussed settlement and agree that a settlement is not possible at this time and that settlement is unlikely to occur in the near future.

IX. MAGISTRATE JUDGE. The Parties have conferred and do not consent to have the magistrate judge preside over the entire case.

X. ADDITIONAL ORDERS. The Parties have further agreed in principle to draft and submit for the Court's review and approval the following additional orders:

- i. Confidentiality Stipulation and Proposed Order;
- ii. Rule 502 Clawback Stipulation and Proposed Order; and
- iii. ESI Protocol Stipulation and Proposed Order.

XI. OTHER MATTERS.

- a. The Parties have agreed to accept service via electronic service (i.e., email) after initial service of process.

b. This case should not be made subject to the Manual for Complex
Litigation.

Dated: June 8, 2022

/s/ Roberta A. Kaplan

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2022, I electronically filed the foregoing with the Clerk of Court using CM/ECF, and that a true and correct copy of the foregoing has been furnished on all counsel of record and *pro se* parties, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner.

/s/ D. Brandon Trice
D. Brandon Trice, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et, al,

Plaintiffs,

Case No: 4:22-cv-00134-AW-MJF

vs.

RONALD DION DESANTIS, in
his official Capacity as Governor
of the State of Florida, et al,

Defendants.

_____ /

**DEFENDANT, PASCO COUNTY SCHOOL BOARD’S
MOTION TO DISMISS FOR IMPROPER VENUE**

COMES NOW, Defendant, PASCO COUNTY SCHOOL BOARD (“Pasco”), pursuant to Federal Rules of Civil Procedure 21 and 12(b)(6), (3) and (1), moves the Court for an Order dismissing the Plaintiffs’ Complaint as to Pasco for improper venue, and states as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are a collection of two (2) entities, four (4) students, nine (9) parents, and 2 teachers (See ¶¶ 25 – 81) who make various challenges to the constitutionality of Florida State legislative act entitled House Bill 1557 (also

known as “H.B. 1557”)¹ and seek declaratory and injunctive relief against the application thereof. (See ¶¶ 261 – 317) Such legislative act was passed by the Florida legislature on March 8, 2022, signed into Florida Law by the Defendant, Ronald Dion Desantis, in his official Capacity as Governor of the State of Florida, on March 28, 2022, and becomes effective July 1, 2022.²

2. There is no allegation in the Complaint that the Pasco participated in the creation, drafting, or passage of such legislation, nor that Pasco has any authority to have done so.

3. To establish jurisdiction and venue, the Complaint makes only a general statement that “Defendant’s are public officials in the State of Florida, they are sued in their official capacities, and certain Defendants maintain their principal headquarters in this District....” (See ¶22)

4. The only allegation made in the Complaint that any plaintiff has any contact to Pasco County, Florida, is that Plaintiff, Washington, is a “drama teacher at Union Park Charter Academy in Pasco County.” (See ¶ 79).

¹ As codified, H.B. 155 creates new subsections to the existing statutory provisions of §1001.42(8), Fla. Stat., inserting the substantive language about which the Plaintiffs complain in this action.

² While this information is not specifically set out within the four corners of the complaint, it is offered only as background and is based upon State official record information of the Florida House of Representatives at <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=76545>.

5. Pasco is a district school board, charged by state law with the operation and authority **only** over public schools in Pasco County, Florida, and it has no corporate or physical presence within the Northern District.

MOTION TO DISMISS

6. Plaintiffs' Complaint against Pasco should be dismissed for improper venue for the following reasons: (A) Pasco appears to be little more than a nominal party improperly or mistakenly joined to this action despite having no virtually no relationship to the dispute, nor physical contacts with the district; and (B) the home venue privilege permits Pasco to insist venue for any claim against it be adjudicated in the Middle District of Florida.

(A) Pasco appears to be little more than a nominal party improperly or mistakenly joined in this action.

7. While Plaintiffs allege that Pasco "is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 et seq.," the Plaintiffs omit or are unaware that Pasco, as a school board, is organized and governed by the Florida Constitution as the governmental agency duly empowered to administer, manage, and operate" public school **within** Pasco County, Florida. See, Art. IX, Sec. 4., Fla. Const.³

³ See also, §1003.02, Fla. Stat., which provides in pertinent part, "As provided in part II of chapter 1001, district school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school districts."

8. No allegation asserts that Pasco has or had any contacts with this venue. Pasco is not alleged to have any jurisdictional authority over any of the Plaintiffs within the venue of this Court; nor to have conducted any business activity or been involved in any enterprise giving rise to this action with the Plaintiffs within the venue of this Court. Pasco respectfully asserts that the Northern District is an inappropriate venue for litigation against it in this matter.

9. Additionally, the only Plaintiff who alleges any relationship with Pasco is Myndee Washington, who alleges she is a “drama teacher at Union Park Charter Academy in Pasco County.” See ¶ 79. Plaintiff, Washington fails to note that Union Park Charter Academy is a separate legal entity from Defendant, Pasco, and that, as such, Washington is NOT an employee of Defendant, Pasco, and is not subject to any direct management, supervision or control of Defendant, Pasco. Thus, any direct relationship between Washington and Defendant, Pasco, is virtually non-existent -- remote and/or tenuous, at best.

(B) The home venue privilege permits Pasco to insist venue for any claim against it be adjudicated in the Middle District of Florida.

10. Under Florida Law, School Boards as political subdivisions are entitled to a home venue privilege to be sued within the venue assigned to its principal geographical location – for Pasco, this would be Pasco County Florida, or the Federal Court for the Middle District of Florida.

MEMORANDUM OF LAW

11. For the purposes of determining the authorized and appropriate venue for litigation of Federal questions, 28 U.S.C. 1391, provides in pertinent part as follows:

(b) Venue in general. --A civil action may be brought in--

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; ...

(d) Residency of corporations in States with multiple districts.-- For purposes of venue under this chapter, **in a State which has more than one judicial district and** in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, **such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State**, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

12. This provision has been interpreted to require courts to “focus on relevant **activities of the defendant, not of the plaintiff.**” (**Emphasis added.**) See *NuTek International, Inc., v Moxley-West*, 2014 WL 12623811 at *4. Moreover, the court’s analysis regarding venue should “ensure that a defendant is not haled into a remote district having no real relationship to the dispute.” See *Hemispherx Biopharma, Inc. v. MidSouth Capital, Inc.*, 669 F.Supp.2d 1353, 1357 - 1358 (2009) (citing, *Jenkins Brick Co., v. Bremer*, 321 F.3d 1366, 1371-72 (11th Cir. 2003), and *Woodke v Dahm*, 70 F.3d 983, 985 (8th Cir. 1995). See also, *Vivant*

Pharms., LLC v. Clinical Formula, LLC, No. 10–21537, 2011 WL 1303218, (S.D. Fla. Mar. 31, 2011).

13. Rather than alleging that Pasco has any relationship to the dispute or this District, the Complaint generally alleges a legal conclusion of jurisdiction and venue of this Court, as follows:

22. This Court has personal jurisdiction over Defendants, and **venue is proper** in this District pursuant to 28 U.S.C. § 1391(b), because **Defendants are public officials in the State of Florida, they are sued in their official capacities, and certain Defendants maintain their Principal headquarters in this District.** Defendants reside within this District **and/or perform official duties within Florida.** (**Emphasis added.**)

(A) Pasco appears to be little more than a nominal party improperly joined in this action.

14. As a school board within the State of Florida, Pasco has power and authority to act within the District of Pasco County, Florida.

15. Article IX, Section 4 of the Constitution of the State of Florida, provides as follows:

(a) **Each county shall constitute a school district;** provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district....

(b) **The school board shall operate, control and supervise all free public schools within the school district** and determine the rate of school district taxes within the limits prescribed herein....

16. The Complaint fails to allege that Pasco has any contacts within this Court's District, or that Pasco has engaged in any relevant action or conduct within the venue of this Court's District, or that Pasco has the legal authority to act within this Court's District.

17. More specifically, the allegations of Defendant Washington, address her impressions and concerns, but fail to address any specific action taken by Pasco relative to matters within the Complaint. See ¶¶ 79 – 81, 92, 222 – 223, 225, 228 – 230, 232, 239, 266, 270, and 304

18. Likewise, the Complaint fails to allege any of the Plaintiffs located **within** the Northern District's geographical venue have been or will be affected by any specific action taken by or conduct of Pasco.

19. Additionally, Defendant Washington is not an employee of Pasco. Rather, she is an employee of the separate legal entity, Union Park Charter Academy, a public charter school operating within Pasco County Florida pursuant to § 1002.33, Fla. Stat.

20. Under Florida law, charter schools, such as Union Park Charter Academy, are operated by independent governing boards, which are separate legal entities from the School Board. Most significantly, some of statutory rights under which a charter school such as Union Park Charter Academy, enjoy include the following:

A. The right to select its own employees, (which are not employees of Pasco); §1002.33(12)(a), Fla. Stat.

B. Adopt its own policies (which are separate from the policies of Pasco⁴); §1002.33(12)(g)(3), Fla. Stat., and

C. The exemption from “all statutes in chapters 1000-1013. §1002.33(16)(a), Fla. Stat.

21. For the reasons stated above, Defendant, Pasco, appears to be little more than a nominal party improperly joined in this action, and has not engaged in conduct that subjects it to the venue of this Court.

(B) The home venue privilege permits Pasco to insist venue for any claim against it be adjudicated in the Middle District of Florida.

22. Under state law, the authorized and appropriate venue for litigation on such statute is established by §47.011, Fla. Stat., which provides as follows:

Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located.

⁴ Also related and significant to understanding the significance of this provision is 1002.33(5)(b)(1)(d), which provides, “The **sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school.** If the sponsor subsequently amends any agreed-upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.” (**Emphasis added.**)

23. Under Florida law, Pasco is the governing body of the Pasco School District, and the corporate governmental agency empowered by the constitution and statutes of the State of Florida to administer, manage, and operate” the public schools within Pasco County, Florida. 1001.40, Fla. Stat.; Art IV, §4, Fla. Const.

24. Since Pasco has not, through any action or conduct, submitted itself to the venue of this Court’s District, Pasco has and hereby asserts its State and common law “home venue privilege” to be sued in the county where it maintains its principal headquarters. See, § 47.011, Fla. Stat.; and *School Bd. of Osceola County v. State Bd. of Educ.*, 903 So.2d 963, 966 (Fla. 5th DCA 2005).

25. Such home venue privilege was created by common law, and among other things, the privilege is intended to "promote orderly, efficient, and economical government" by allowing governmental entities to be sued in the county of their headquarters, "where such suits can be defended at a minimum expenditure of effort and public funds." *Smith v. Williams*, 35 So.2d 844 (Fla. 1948); *Florida Dept. of Children and Families v. Sun-Sentinel*, 865 So.2d 1278, 1287 (Fla. 2004) ("Sun-Sentinel II"). See also, *Fish & Wildlife Conservation Com'n v. Wilkinson*, 799 So.2d 258, 263 (Fla. 2d DCA 2001).

26. In consideration of these principles, Pasco asserts that the Plaintiffs’ venue selection in this venue is inappropriate as it relates to any claim against Pasco.

CONCLUSION

For the aforementioned reasons, Pasco should be dismissed from the relief requested by the Complaint based upon Plaintiff's choice of improper venue against Pasco and based upon Pasco's home venue privilege.

Dated 20 June 2022

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s/ Dennis J. Alfonso

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned electronically filed the foregoing with the Clerk of the Court via the CM/ECF system on June 20, 2022, and requested the Clerk provide electronic notification to all counsel of record.

s/ Dennis J. Alfonso

DENNIS J. ALFONSO, Esquire

Florida Bar Number: 843271

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO.: 22-CV-00134-AW-MJF

EQUALITY FLORIDA, et al,

Plaintiffs,

vs.

RONALD D. DESANTIS, in his official
Capacity as Governor of Florida, et al,

Defendants.

DEFENDANT SCHOOL BOARD OF BROWARD COUNTY'S
MOTION TO DISMISS FIRST AMENDED COMPLAINT

The Defendant School Board of Broward County (“BCSB”)¹, by and through its undersigned attorneys and pursuant to Rules 12(b)(1)(6) of the Fed. R. Civ. Pro. requests that the Court enter an order dismissing Plaintiff’s First Amended Complaint (DE 52) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted against BCSB, and dismissing and/or striking the claims for punitive damages against BCSB, and as grounds therefore would show:

1. The Plaintiffs’ collectively seek declaratory and injunctive relief regarding the constitutionality of the Florida Legislature’s recent adoption of a statute relating to parental rights in education (H.B. 1557). Relief is sought against Florida Governor Ronald D. DeSantis and the Florida Department of Education as well as several Florida school districts including the BCSB.

¹ The First Amended Complaint refers to BCSB as the Broward County School Board, but its correct legal name is The School Board of Broward County.

2. The claims against BCSB are asserted by Plaintiffs Equality Florida, Family Equality and Scott Berg (“Berg”) who is allegedly employed as a teacher by BCSB. The First Amended Complaint appears to assert that the anticipated future application of H.B. 1557 will deprive Plaintiff Berg of federally protected rights secured under the First and Fourteenth Amendments of the Constitution. The relief requested includes a permanent injunction to enjoin the implementation and enforcement of H.B. 1557 together with an award of nominal, compensatory, statutory and punitive damages.²

3. There is a lack of subject matter jurisdiction and the First Amended Complaint fails to state a federal claim upon which relief can be granted as against BCSB for the following reasons:

(a) The subject statute has not become effective and the First Amended Complaint is devoid of any allegations that the challenged statute has been applied by Defendant BCSB to Plaintiff Berg or any of the named Plaintiffs. As such, the claim against BCSB is premature and is not ripe and/or Plaintiff Berg and the other Plaintiffs lack standing to maintain a claim against BCSB.

(b) The First Amended Complaint fails to state a plausible claim that the Defendant BCSB has deprived or will deprive Equality Florida, Family Equality and/or Berg of any right protected by the First and Fourteenth Amendments of the Constitution.

(c) The First Amended Complaint is devoid of any allegations to establish entity liability against BCSB for a violation of 42 U.S.C. §1983. The Plaintiffs fail to allege that any policy of custom of BCSB has or will in the future cause Plaintiff Berg or any of the other Plaintiffs to be deprived of a federally protected right.

² The First Amended Complaint does not allege that BCSB has actually applied H.B. 1557 to Plaintiff Berg. Indeed, the statute will not become effective until July 1, 2022.

4. Plaintiffs seek an award of punitive damages against the Defendants including BCSB (DE 52 at ¶115). Governmental entities such as BCSB are not subject to an award of punitive damages for a violation of 42 U.S.C. §1983. As a result, the claim for punitive damages should be dismissed and/or stricken.

Memorandum of Law

In accordance with N.D. Fla. Loc. R. 7.1, Defendant BCSB sets forth its Memorandum of Law in support of said Defendant's Motion to Dismiss Plaintiff's First Amended Complaint and states as follows:

Introduction

The First Amended Complaint seeks relief arising from the Florida Legislature's adoption of a portion of H.B. 1557 which in relevant part provides as follows:

(8) STUDENT WELFARE -

(c)3 Classroom instruction by school personnel or third parties on sexual orientation of gender identity may not occur in kindergarten through grade three or in a manner which is not age-appropriate or developmentally appropriate for students in accordance with state standards.

Section 2. By June 30, 2023, the Department of Education shall review and update, as necessary, school counseling frameworks and standards; educator practices and professional conduct principals; and any other student services personnel guidelines, standards, or frameworks in accordance with the requirements of this act.

Section 3. This act shall take effect July 1, 2022.

Allegations concerning BCSB are set forth in paragraphs 78, 87, 108 and 217-221. As it pertains to Defendant BCSB, it is alleged that:

(a) Plaintiff Berg is employed by BCSB as an elementary school art teacher,

(b) Defendant BCSB is a District School Board which employs Berg and is required by Florida law to implement H.B. 1557,

(c) BCSB has required an inclusive curriculum for LGBTQ students,

(d) Plaintiff Berg is concerned that H.B. 1557 will require him to alter “his” curriculum, prevent him from fostering an inclusive environment and that if he acknowledges his identity as a gay male he will be called a “pedophile” or a “groomer”.

Count I of the First Amended Complaint asserts that H.B. 1557 is void for vagueness, Count II asserts that BCSB has denied Berg equal protection of the laws, Counts III and IV assert that BCSB has deprived some of the Plaintiff (excluding Berg) their First Amendment rights to receive information and freedom of expression and that H.B. 1557 is overbroad and has a chilling effect on members of equality Florida and Family Equality’s First Amendment rights of expression.

Lack of Subject Matter Jurisdiction

To establish standing, Plaintiffs must show (1) injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) a causal connection between that injury and the complained on conduct; and (3) redressability, meaning a favorable decision would eliminate the injury. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Where prospective declaratory and injunctive relief is requested, a plaintiff must “demonstrate that he is first likely to suffer future injury; second, that he is likely to suffer such injuries at the hand of the defendant; and third, that the relief will likely prevent such injury from occurring”. *Cone Corp. v. Florida Department of Transportation*, 921 F.2d 1190, 1203-04 (11th Cir. 1991). Since an injunction seeks to regulate future conduct, a plaintiff seeking such relief must also allege a real and immediate threat, not merely a conjectural or hypothetical threat of a future injury. *Shotz v. Cates*,

256 F.3d 1077, 1081 (11th Cir. 2001). A Plaintiff must also establish standing as to each claim and for each type of relief sought. *Davis v. Federal Election Commission*, 554 U.S. 724, 734 (2008).

Plaintiffs M.A. Zander Moricz, Jane Doe, Rabbi Amy Morrison, Cecile Houry, Dan and Brent Vantice, Lourdes Cesares, Kimberly Fineberg, Lindsey Bingham Shook, Anh Volmer and Myndee Washington do not allege any connection with Defendant BCSB or that BCSB has applied or threatened to apply H.B. 1557 to any of these Plaintiffs. With respect to the organizational Plaintiffs, Equality Florida and Family Equality, the First Amended Complaint also fails to allege any connection with BCSB or that BCSB has applied or threatened to apply H.B. 1557 to these organizations. Indeed H.B. 1557's application is limited to "classroom instruction" of pre-k through third grade public school students. There are no allegations that Plaintiffs Equality Florida and/or Family Equality engage in the classroom instruction of pre-k through third grade students in the Broward Public School system. As such, these Plaintiffs fail to allege any existing or imminent non-speculative injury attributable to BCSB.

With respect to Plaintiff Berg, the First Amended Complaint does not allege that BCSB has ever applied H.B. 1557 to Berg, that BCSB has ever threatened to apply H.B. 1557 to Berg or that there is any imminent threat of the application of the statute to Berg. Indeed, the statute does not take effect until July 1, 2022, there is no allegation that Berg is engaged in classroom instruction during the summer months and neither Plaintiff Berg nor any of the other Plaintiffs seek a preliminary injunction. Indeed, H.B. 1557 does not provide for the taking of any action against a teacher such as Plaintiff Berg and instead provides that parental concerns regarding compliance with the statute shall be addressed through an administrative proceeding against the

school district or a civil action for declaratory and injunctive relief against the school district. See Section 1001.42(8)(c) 7(b), Florida Statute (2022). No case or controversy exists between BCSB and any of the Plaintiffs.

No Viable Federal Claim or Basis for BCSB Liability

Due Process (Count I)

As set forth above, the challenged portion of H.B. 1557 applies to “**Classroom instruction**” by “school personnel or third parties”. (emphasis added) With the exception of Plaintiff Berg, none of the other Plaintiffs allege that they engage in classroom instruction in Broward Public Schools. Moreover, H.B. 1557 provides for enforcement through an administrative proceeding or civil action for declaratory and injunctive relief against “**school districts**” (emphasis added) and none of the Plaintiffs allege that they are therefore subject to the enforcement mechanism of 1557. Finally, Section 2 of H.B. 1557 provides that the Florida Department of Education shall adopt personnel guidelines, standards or frameworks in accordance with the requirements of the act and provides that this will occur by June 30, 2023. The First Amended Complaint fails to allege that any such action has yet been taken by the Florida Department of Education. The First Amended Complaint fails to plausibly allege that the Defendant BCSB has deprived any Plaintiff of life, liberty or property without due process of law.

Equal Protection Claim (Count II)

Count II initially asserts that the Florida Legislature had an invidiously discriminatory purpose in the adoption of H.B. 1557. There is no allegation that the BCSB participated in the adoption of H.B. 1557. Again there is no allegation that Defendant BCSB has ever applied H.B. 1557 to Berg or any of the other Plaintiffs or that the Defendant BCSB has treated Berg or any of

the other Plaintiffs differently than similarly situated persons, or that there is any imminent threat that BCSB will do so. The statute on its face applies to classroom instruction by all teachers and third parties regardless of their gender identity or sexual orientation. To state an as applied equal protection claim against the BCSB, Plaintiffs are required to alleged that BCSB has applied the statute and that Plaintiffs were treated differently than similarly situated persons and that Defendant BCSB applied the law unequally for the purpose of discriminating against them. *Strickland v. Alderman*, 74 F.3d 260, 264 (11th Cir. 1996). The First Amended Complaint contains no such allegations. Count II fails to state a plausible equal protection claim against Defendant BCSB.

First Amendment Claims (Counts III-V)

Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida and Family Equality seek relief against the Defendant BCSB for claimed violations of their First Amendment right to receive information or engage in freedom of expression. Relief is not sought by Plaintiff Berg against Defendant BCSB. Again, the First Amended Complaint fails to allege any connection between these Plaintiffs and the Defendant BCSB. Moreover, none of the Plaintiffs have any First Amendment right to alter the curriculum provided to pre-K through third grade students so as to teach public school students regarding issues they believe are important and beneficial. See *Evans-Marshall v. Board of Education of Tipp City Exempt School District*, 624 F.3d 332, 340-42 (6th Cir. 2010) and *Webster v. New Lenox School District No. 122*, 917 F.2d 1004 (7th Cir. 1990) (teachers do not have a First Amendment right to vary curricular content). The statute applies to classroom instruction and does not violate the First Amendment free speech rights of the Plaintiffs.

Count V is brought by Plaintiffs M.A., Moricz, S.S., Doe, Equality Florida and Family

Equality against Defendant BCSB and alleges that H.B. 1557 is overbroad in violation of the First Amendment. Again, none of the Plaintiffs allege that they have any connection with BCSB, that BCSB has applied or that there is any imminent threat that BCSB will apply the subject statute to any of the Plaintiffs or that any of the Plaintiffs engage in classroom instruction in Broward Public Schools such that there could be any application by BCSB to the Plaintiffs. Count V fails to state any viable claim against Defendant BCSB.

No Basis for Entity Liability

It is axiomatic that section 1983 liability cannot be imposed on BCSB unless a plaintiff was deprived of a federally protected right pursuant to a BCSB policy or custom. See generally, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978). A school district is “liable under section 1983 only for acts for which [the school district] is actually responsible.” *Marsh v. Butler County*, 268 F.3d 1014, 1027 (11th Cir. 2001) (*en banc*). The Plaintiffs in this action must “identify a [school district] policy or custom that cause their injury.” *Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998) (internal quotation marks omitted) and *Grech v. Clayton County, GA*, 335 F.3d 1326, 1329-30 (11th Cir. 2003). The First Amended Complaint does not identify any officially promulgated BCSB policy or unofficial custom or practice of BCSB shown through the repeated acts of a final policy maker which allegedly caused or will cause Plaintiffs to be deprived of any federally protected right. See *Grech v. Clayton County, GA.*, *supra* at 1329. To establish entity liability against BCSB, Plaintiffs are required to allege and show that BCSB has authority and responsibility over the governmental function at issue. *Teagan v. City of McDonough*, 949 F.3d 670, 675 (11th Cir. 2020), citing *Grech v. Clayton County*, *supra* at 1330.

The First Amended Complaint affirmatively alleges that BCSB and the other school districts do not have authority and responsibility over the governmental function at issue. Instead, the establishment of the complained of prohibition on classroom instruction emanates from Florida legislature and will thereafter be more fully defined by rules and regulations adopted by the Florida Department of Education. Any implementation of H.B. 1557 by BCSB will be as a “arm of the state” not as a result of any policy or custom promulgated by BCSB. Where a local governmental entity such as BCSB functions as an arm of the state and thus has immunity under the Eleventh Amendment with respect to any claim for damages. See *Kicklighter v. McIntosh County Board of Commissioners*, 694 Fed. Appx. 711, 714 (11th Cir. 2017) (citing *Manders v. Lee*, 338 F.3d 1304, 1308 (11th Cir. 2003)). See, also generally this Court’s recent decision in *Dream Defenders v. DeSantis*, 553 F. Supp. 3rd 1052, 1085-1090 (N.D. Fla. 2021) holding that Florida county sheriff’s function as an arm of the state with respect to the “anti-riot bill”. No basis exists for imposing section 1983 liability on Defendant BCSB.³

No Basis for a Punitive Damage Award

Plaintiffs seek an award of punitive damages against the Defendant BCSB. (DE 52 at ¶315). Punitive damages cannot be awarded against a governmental entity for a violation of 42 U.S.C. §1983. See *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

³ Count VI seeks relief for an alleged violation of Title IX but does not seek relief against Defendant BCSB.

WHEREFORE, in accordance with the reasons and authorities stated above, Defendant BCSB requests that the Court enter an order dismissing this action as against it for lack of subject matter jurisdiction and/or for failure to state a federal claim upon which relief can be granted.

Dated: June 27, 2022

Respectfully submitted,

/s/Christopher J. Stearns

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of records or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

CASE NO. 4:22-CV-00134-AW-MJF

Equality Florida, *et al.*,

Plaintiffs,

v.

**Ronald D. DeSantis, in his official
capacity as Governor of the State of
Florida, *et al.*,**

Defendants.

**DEFENDANT MIAMI-DADE SCHOOL BOARD'S ANSWER
TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant, the School Board of Miami-Dade County, Florida (“Miami-Dade School Board”), pursuant to Federal Rule of Civil Procedure 8(b), respectfully submits that it takes no position on the merits of Plaintiffs’ Amended Complaint (DE47) or on its Co-Defendants’ potential defenses on the merits. Although the Miami-Dade School Board specifically denies that it operates Miami Children’s Museum Charter School, as alleged in Paragraph 90, it admits to the remainder of that paragraph’s allegations, as well as the allegations of Paragraph 107, and otherwise lacks knowledge or information sufficient to form a belief about the truth of the Amended Complaint’s remaining allegations. The Miami-Dade School Board will abide by any final judgment of this Court concerning the challenged statute.

Dated: June 27, 2022.

Respectfully submitted,

/s/ Walter J. Harvey

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*Attorney for Defendant, the School Board
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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this date on all counsel of record and *pro se* parties either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

CASE NO. 4:22-CV-00134-AW-MJF

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this date on all counsel of record and *pro se* parties either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

vs.

CASE NO.: 4:22-CV-00134-AW-MJF

**RONALD D. DESANTIS, in his
Official capacity as Governor of
Florida, et al.,**

Defendants.

**DEFENDANT SCHOOL BOARD OF SARASOTA COUNTY’S MOTION
TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT AND
MEMORANDUM OF LAW IN SUPPORT**

Defendant, School Board of Sarasota County (“SBSC”), by and through its undersigned counsel and pursuant to Fed. R. Civ. P. 12(b), hereby moves to dismiss Counts I–V of the First Amended Complaint (the “Complaint”) (Dkt. 47) and in support, states as follows:

OVERVIEW OF COMPLAINT AND SUMMARY OF ARGUMENTS

In order to understand the contentions raised in SBSC’s motion, it is necessary to understand the convoluted nature of the Complaint’s parties, causes of action, and allegations.

This 114-page lawsuit involves thirteen (13) distinct plaintiffs, eighteen (18) distinct defendants, and contains six (6) separate causes of action. The thirteen (13)

Plaintiffs consist of:

- two (2) public-interest organizations (neither of which are based in Sarasota County, Florida or whom plead any specific ties to Sarasota County, Florida);
- three (3) current students (one who partially resides in Brandon, Florida and attends public school in Florida in an unidentified county; one in Manatee County, Florida who attends a charter school; and one in Miami-Dade County, Florida who attends a public school);
- one (1) former student – Zander Moricz (“Moricz”) (from Sarasota County, Florida);
- three (3) sets of parents (one set from St. Johns County, Florida and two sets from Miami-Dade County, Florida);
- two (2) individual parents (one from Miami-Dade County, Florida and one from Orange County, Florida)
- two (2) teachers (one from Broward County, Florida and one from Pasco County, Florida).

The eighteen (18) Defendants consist of:

- Florida’s Governor in his official capacity;
- Florida’s Board of Education;
- The seven (7) individual members of Florida’s Board of Education in their official capacities;
- Florida’s Commissioner of Education in his official capacity;
- Florida’s Department of Education; and
- Seven (7) Florida school boards (Broward County, Manatee County, Sarasota County, Miami-Dade County, Orange County, St. Johns County, and Pasco County).

SBSC is a defendant in Counts I-V. Each of these counts contains conclusory language alleging vaguely that each plaintiff in each respective count has been irreparably harmed and has suffered damages to be determined at trial.¹

Count I, which is pursued by *all* Plaintiffs against *all* Defendants, is brought pursuant to 42 U.S.C. § 1983 hereinafter a “§ 1983 action”) that challenges the constitutionality of the recently enacted Florida House Bill 1557 (“H.B. 1557”) as vague under the United States Constitution’s Fourteenth Amendment’s Due Process Clause, both facially and as applied.

Count II, which is also pursued by *all* Plaintiffs against *all* Defendants, is a § 1983 action in which Plaintiffs both: (1) allege that “Defendants” have deprived “Plaintiffs” of the rights, privileges, and immunities secured by the Equal Protection clause of the Fourteenth Amendment to the Constitution, and (2) challenge the constitutionality of H.B. 1557 under a theory that it violates the Constitution’s Equal Protection Clause, facially and as applied.

Count III, brought by six (6) Plaintiffs against *all* Defendants, is a § 1983 action that challenges the constitutionality of H.B. 1557 under a theory that it violates the First Amendment rights of plaintiffs M.A., Moricz, S.S., and Jane Doe

¹ Given the convoluted nature of the Complaint, the number of Plaintiffs and Defendants involved with each count, the failure to outline how each of the different individual Defendants were liable within each count, and the boilerplate and conclusory description of the relief sought within each count, it is unclear to SBSC what exact claims Plaintiffs have made within each count. For that reason, the below represents SBSC’s best understanding of what claims have been alleged by Plaintiffs.

(the “Student Plaintiffs”) and organizational plaintiff Equality Florida to receive information and ideas, facially and as applied. Although it is included, it is unclear how the other organizational plaintiff, Family Equality, is involved in this specific count.

Count IV, which is pursued by six (6) Plaintiffs against *all* Defendants, challenges the constitutionality of H.B. 1557 under a theory that it violates students’ First Amendment right to freedom of expression, facially and as applied.

Count V, pursued by six (6) Plaintiff’s against all of the Defendants, challenges the constitutionality of H.B. 1557 as well, in this case as overbroad under the First Amendment to the United States Constitution, facially and as applied.

SBSC should be dismissed from Counts I-V of the Complaint for several reasons. First, the Complaint represents a shotgun pleading that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which specific acts.

Additionally, SBSC should be dismissed from Counts I-V for various other reasons. First, neither Moricz, who graduated in May of 2022 (*before* H.B. 1557 became effective), nor any of the other Plaintiffs possess standing against SBSC. Second, Plaintiffs have failed to allege the necessary elements of a valid § 1983 claim and the named Plaintiffs in Count II have failed to state a valid claim that

SBSC deprived the named Plaintiffs of their equal protection rights. Third, SBSC – who had no involvement in H.B. 1557’s drafting – is not a proper party to a constitutional challenge of the bill. Rather, such constitutional challenges are more properly addressed against the state-level Defendants.

Thus, Counts I–V must be dismissed. However, notwithstanding all of the above, if this Court determines that Plaintiffs have only stated a valid § 1983 claim against SBSC for a deprivation of rights, such counts must still be dismissed for improper venue based on SBSC’s entitlement to litigate any surviving claims in either the Middle District of Florida or Florida’s Twelfth Judicial Circuit pursuant to entitlement to “home rule.”

PLEADINGS PERTAINING TO SBSC

All told, the lengthy Complaint makes very limited mention of SBSC or any purported ties that Plaintiffs have to Sarasota County. Below is every reference to SBSC or Sarasota County:

- “Defendant School Board of Sarasota County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.* The School Board of Sarasota County operates Pine View School, which Plaintiff Moricz attended. Its powers and duties include implementing H.B. 1557. *See id.* § 1001.42(8).” Dkt. 47 ¶ 89.
- “Plaintiff Moricz’s school district of Sarasota County adopted ‘Gender Diverse Student Guidelines’ to ‘enhance ongoing efforts to make each Sarasota K-12 public school a safer place for all students – with particular emphasis on LGBTQIA community of students.’ These guidelines specifically recognize that ‘[s]tudents who feel

accepted at school are more highly motivated, engaged in learning and committed to achieving the best possible education.” *Id.* ¶ 106.

- “The Sarasota County Schools’ ‘Creating Safe Schools for All Students: Gender Diverse Student Guidelines’ were updated on March 25, 2022, to remove references to elementary students.” *Id.* ¶ 253.

Of the numerous Plaintiffs in this case, only **one (1)** bears any relationship whatsoever to SBSC: Moricz. Regarding Moricz, only the following references are made:

- “Plaintiff Zander Moricz was specifically instructed not to mention H.B. 1557 or his participation in this lawsuit at his high school commencement speech.” Dkt. 47 ¶ 10.
- “Plaintiff Zander Moricz is an 18-year-old who recently graduated from Pine View School, a public magnet school in Osprey, Florida for academically gifted students. His parents are divorced, and he mainly lives with his mother and younger brother.” *Id.* ¶ 44.
- “Moricz has known he is gay since middle school. At the time, he felt as though he had to constantly hide who he truly was. He would modify his speech and physical gestures and modulate his interests to try to avoid being perceived as gay. He dreaded going to gym class because the boys would tease him in the locker room and call him names like ‘pussy’ and ‘faggot.’ Living in this closeted adolescence was deeply debilitating for Moricz at an important time in his life. He never felt like he fit in or belonged at his school.” *Id.* ¶ 45.
- “Moricz transferred to Pine View School in sixth grade; he came out as gay during his freshman year. At the time, Moricz wanted to run for president of the freshman class and be a leader for his peers, but he wanted to run only if he could do so without being in the closet. Moricz ultimately decided to run, with support from a friend, and came out to his school and the broader community in the process. To his surprise, Moricz won. He remained class president for all four years.” *Id.* ¶ 46.

- “At home, Moricz’s family was not at first accepting of his sexuality. It took many difficult conversations for him to feel safe and accepted. But school was different and better. Moricz has had warm and accepting teachers and friends who embraced him for who he is, and he had many opportunities at school to express who he is and take pride in his identity.” *Id.* ¶ 47.
- “Moricz’s ability to be himself at school allowed him to succeed academically. He had a 5.06 GPA and took nearly every Advanced Placement course his high school offered. He also served as the president of the local Model UN chapter and the head debate captain of the Pine View Speech and Debate Club. He will attend college at Harvard University in the fall.” *Id.* ¶ 48.
- “On April 27, 2022, Moricz was called into his principal’s office and informed that his upcoming commencement speech as senior class president could not include material related to his activism, including his activism against H.B. 1557 or his participation in this lawsuit. He was told that should he reference any forbidden topics during his speech, the administration would shut off his microphone and halt the ceremony.” *Id.* ¶ 174.
- “Moricz delivered his class president speech at the Pine View graduation ceremony on May 22, 2022. Because of his principal’s warning, and the administration’s threat to cut off his microphone and disrupt the ceremony, Moricz did not directly address H.B. 1557 or this lawsuit, nor did he say the word ‘gay.’ In short, he was not permitted to give the speech he had planned to give, and he was not able to speak his own identity or values.” *Id.* ¶ 175.
- “Instead, he developed a euphemism, in which he spoke about having curly hair, about the difficulties he faced growing up in Florida with curly hair—‘due to the humidity,’ as he put it—and about his own failed and futile efforts to ‘straighten his curls.’ He said that ultimately he embraced his curly hair, and he thanked his class and his teachers and principal for accepting and embracing him as curly-haired (prior to the passage of H.B. 1557). ‘It’s because of the love I’ve drawn from this community that I came out to my family,’ he said. ‘Now I’m

happy—and that is what is at stake.’ Moricz went on: ‘There are going to be so many kids with curly hair who need a community like Pine View, and they will not have one. Instead, they’ll try to fix themselves so that they can exist in Florida’s humid climate. . . . [My speech] needs to be about this for the thousands of curly-haired kids who are going to be forced to speak like this for their entire lives as students.’ He noted that his principal had always ‘loved my curls and loved me.’ But, Moricz said, ‘those we have given our power to’—a non-explicit reference to the passage of H.B. 1557, which he was forbidden from addressing directly—‘are the reason that I have to stand here and talk about my hair during my graduation speech.’ Moricz’s speech was met with cheers and a standing ovation, and his principal was the first to hug him.” *Id.* ¶ 176.

- “Moricz’s clever coded language enabled him to navigate the day. As Moricz always has, he found a way to soldier on, to care for others, and to call for justice. But he found it dehumanizing to have to speak cagily about his own identity—to be told, in effect, by the State, that there was something shameful and wrong about him that he should not say out loud. He had been thinking about and planning the speech he would give for years, and he was unable to give that speech. As he rewrote the speech in the weeks following his meeting in the principal’s office, Moricz was frustrated, hurt, sad, and at times angry that he was being censored and silenced in his efforts to speak about his own identity and values. He wanted to speak openly and candidly, as he had learned to do, but he believed that if he defied the principal’s instructions, and the microphones were cut and the ceremony halted, an event that was meant as a celebration for all the students of his class would be ruined. He might put at risk the very love and support that had enabled him to flourish and find happiness at Pine View. Again, Moricz was put to the painful choice of having to hide or suppress a part of himself—to ‘straighten his curls’—in order to find acceptance. He had expected that on the day of his graduation, he would be accepted and celebrated as his authentic self, without stigma or censorship. The exercise of State power to stigmatize and censor Moricz thus caused him considerable emotional harm.” *Id.* ¶ 177.
- “Similarly, Moricz’s teachers have said they will need to remove their images of support, including pride flags and rainbows in the

classroom. These insignia have always indicated to Moricz that he was in a safe and welcoming environment. But apparently out of fear that this support constitutes ‘classroom instruction on sexual orientation or gender identity’, teachers intend to self-censor”. *Id.* ¶ 184.

- “Nominal, compensatory, statutory, and punitive damages in an amount to be determined at trial, as well as prejudgment interest, when appropriate, including the pain and suffering experienced by Moricz as a result of the censorship of his high school graduation speech.” *Id.* ¶ 315.²

Outside of Moricz, not one single allegation is raised against SBSC by any of the other Plaintiffs, nor do the two Plaintiff organizations, either on their own behalf or through their individual members, allege specific ties to SBSC, Sarasota County, Moricz, or any of the remaining Plaintiffs.³ Accordingly, the scope of the allegations made against SBSC is exceedingly limited.

MEMORANDUM OF LAW

Pursuant to Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a short and plain statement of the claim showing the plaintiff is entitled to relief to “give the defendant fair notice of what the...claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554–55, (2007). A

² It is unclear which count in the Complaint this paragraph in the “Prayer for Relief” following the body of the Complaint specifically relates to.

³ Defendant Equality Florida is based in St. Petersburg, Florida. Dkt. 47 ¶ 25. While Equality Florida alleges it has student, parent, and teacher members “throughout the State of Florida” (*Id.* ¶ 26), it fails to plead that any of them have any ties specifically to Sarasota County, FL. Likewise, Family Equality is headquartered in New York, NY. *Id.* ¶ 28. While Family Equality alleges it has a “presence in the southern states, with an emphasis in Florida” (*Id.* ¶ 29), it also fails to plead any specific tie to Sarasota County. Notably, the Complaint is silent regarding whether Moricz is a member of either organization.

complaint that offers “labels and conclusions” or a “formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. While the pleading standard set forth in Rule 8 does not require detailed factual allegations, it does demand more than what is pled here – “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint like the one in this case – which contains “naked assertion[s]” without “further factual enhancement” is insufficient. *Id.* Moreover, like the allegations in this Complaint, “conclusory allegations, unwarranted factual deductions, or legal conclusions masquerading as facts will not prevent dismissal.” *Moseley v. McKesson Medical-Surgical, Inc.*, No. 8:12-cv-2666-T-30EAJ, 2013 WL 3639686, at *1 (M.D. Fla. July 11, 2013).

I. Dismissal is Required Because the Complaint Represents a Shotgun Pleading.

“A shotgun pleading is a complaint that violates either Federal Rule of Civil Procedure 8(a)(2) or Rule 10(b), or both.” *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021) (citing *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015)). “Shotgun pleadings ‘are flatly forbidden by the spirit, if not the letter, of these rules’ because they are ‘calculated to confuse the enemy, and the court, so that theories for relief not provided by law and which can prejudice an opponent's case, especially before the jury, can be masked.’” *Id.* “Besides violating the rules, shotgun pleadings also ‘waste scarce judicial

resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public's respect for the courts.” *Id.* Courts have “little tolerance” for them. *Id.*

There are “four rough types or categories of shotgun pleadings.” *Id.* at 1324 (quoting *Weiland*, 792 F.3d at 1321). “The first is ‘a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.’” *Id.* at 1324–25. “The second is a complaint that is ‘replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.’” *Id.* “The third is a complaint that does not separate ‘each cause of action or claim for relief’ into a different count.” *Id.* “And the final type of shotgun pleading is a complaint that ‘assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.’” *Id.*

For various reasons, this Complaint represents a shotgun pleading. Specifically, the Complaint is replete with conclusory and immaterial facts that bear no relation to any of the causes of action here. For instance, throughout their pleading, Plaintiffs raise facts that have no connection to their causes of action for violation of the First and Fourteenth Amendment by SBSC. As it relates to Moricz

in particular, for example, the Complaint includes a recitation of Moricz’s conversation with his school principal, during which he claims that he was told his upcoming commencement speech as Senior Class President could not include material related to his activism. *See* Dkt. 47 ¶ 174. But the Complaint fails to ever connect these claims to any one specific cause of action raised by the Plaintiffs against SBSC. By way of further example, as it relates to Count I, in which Plaintiffs contend that “H.B. 1557 is void for vagueness,” (Dkt. 47 ¶ 263), Plaintiffs’ only allegation relating to Moricz is that the same bill “fails to provide a person of ordinary intelligence a reasonable opportunity and fair notice to understand what students can and cannot say and do...” *Id.* ¶ 264. This dichotomy exists throughout the pleading, as Plaintiffs repeatedly fail to connect any of the factual allegations presented with claims against SBSC.

Additionally, Plaintiffs repeatedly assert the same claims against the same Defendants without making even the slightest attempt to specify which of the Defendants are responsible for which acts, or which of the Defendants each claim is brought against. Instead, despite the separate and distinct categories of Plaintiffs and Defendants,⁴ Plaintiffs bring all-encompassing claims against *all* Defendants in each of Counts I-V. Throughout the Complaint, where Plaintiffs bring such claims, they importantly fail to ever connect individual allegations to each particular

⁴ Plaintiffs are organizations, students, former students, teachers, and parents. Defendants are state officials, state-level departments, and local school districts.

Defendant. As one mere example of this practice, in the Complaint’s “Prayer for Relief,” Plaintiffs make the conclusory assertion that Moricz is entitled to damages for censorship without linking this claim to any of the five (5) counts that SBSC is a named Defendant in – which, in turn, leaves SBSC to speculate as to what count in the Complaint this assertion relates to, if any.

For all of these reasons, each count in this Complaint represents a clear shotgun pleading and, accordingly, should be dismissed on this basis alone. *See Barmapov v. Amuial*, 986 F.3d 1321, 1325–26 (11th Cir. 2021); *Marsey v. State Bd. of Admin. of Fla.*, 497 F. Supp. 3d 1214, 1216–18 (N.D. Fla. 2020) (Winsor, J.).

II. Dismissal is Similarly Required Because None of the Plaintiffs in Counts I-V Possess Standing Against SBSC.

“Article III of the United States Constitution limits the role of the federal judiciary to resolving cases and controversies.” *Dykes v. Dudek*, No. 4:11CV116/RS-WCS, 2011 WL 4552395, at *1 (N.D. Fla. Oct. 3, 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992)). “Standing is a core component of this Article III requirement that must be established by litigants before a court may exercise jurisdiction over their claims.” *Id.* (citing *Lujan*, 504 U.S. at 560).

In *Lujan*, “the Supreme Court said the ‘irreducible constitutional minimum of standing contains three elements.’” *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261,

1265 (N.D. Fla. 2020) (quoting *Lujan*, 504 U.S. at 560). “First, the plaintiff ‘must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.’” *Id.* (internal quotation marks and citations omitted). “Second, ‘there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” *Id.* (internal quotation marks, ellipses, and brackets omitted). “Third, ‘it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.’” *Id.* (internal quotation marks omitted).

Associations such as Equality Florida and Family Equality “[have] standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Speech First, Inc. v. Cartwright*, 32 F. 4th. 1110, 1119 (11th Cir. 2022) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 181, 120 S.Ct. 693, 145 L. Ed. 2d 610 (2000)).

In order to establish standing, each Plaintiff must satisfy each of the factors described below. Because each Plaintiff cannot do so here, SBSC is entitled to dismissal.

a. Injury-in-Fact

“An injury-in-fact cannot be an abstract injury.” *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004). “A plaintiff must point to some type of cognizable harm, whether such harm is physical, economic, reputational, contractual, or even aesthetic.” *Id.* “But the injury-in-fact test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.” *Id.* (quoting *Lujan*, 504 U.S. at 563, 112 S. Ct. at 2137). “The plaintiff must be ‘directly’ affected apart from [his or] her ‘special interest in the subject.’” *Id.* (quoting *Lujan*, 504 U.S. at 563, 112 S. Ct. at 2138). “To be particularized, ‘we mean that the injury must affect the plaintiff ***in a personal and individual way.***’” *Id.* (quoting *Lujan*, 504 U.S. at 561, 112 S. Ct. at 2136 n. 1) (emphasis added). “If the plaintiff is merely a ‘concerned bystander,’ then an injury-in-fact has not occurred.” *Id.*

“[T]hreatened injury must be certainly impending to constitute injury-in-fact...[a]llegations of possible future injury are not sufficient.” *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1338–39 (11th Cir. 2021) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409, 133 S. Ct. 1138, 1147, 185 L.Ed.2d 264

(2013)). “While this standard does not require a plaintiff to show that it is ‘literally certain that the harms they identify will come about,’ it, at the very least, requires a showing that there is a ‘substantial risk’ that the harm will occur.” *Id.* (quoting *Clapper*, at 414 n.5, 133 S. Ct. at 1150 n.5).

“Plaintiffs who seek injunctive relief must make an additional showing to demonstrate standing.” *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1229 (11th Cir. 2021) (citing *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1328 (11th Cir. 2013) (“The ‘injury-in-fact’ demanded by Article III requires an additional showing when injunctive relief is sought.”)). “Because injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party shows ‘a real and immediate — as opposed to a merely conjectural or hypothetical — threat of future injury.’ ” *Id.* “When a plaintiff seeks an injunction, [they] must demonstrate that a future injury is imminent — that there is ‘a sufficient likelihood that he [or she] will be affected by the allegedly unlawful conduct in the future.’ ” *Id.* at 1229–30 (quoting *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004)).

“Although concrete allegations of self-censorship tied to a credible threat of enforcement satisfy the injury-in-fact requirement, a ‘mere assertion of a chill is insufficient.’ ” *Restoration Assoc. of Fla., Inc. v. Julie I. Brown*, No. 4:21-CV-263-AW-MAF, 2022 WL 1279692, at *4 (N.D. Fla. Jan. 10, 2022) (Winsor, J.) (citing *Dermer v. Miami-Dade Cnty.*, 599 F.3d 1217, 1221 (11th Cir. 2010); *Laird v. Tatum*,

408 U.S. 1, 13-14 (1972) (“Allegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm”)).

Here, of the thirteen (13) Plaintiffs who have brought claims against SBSC in this action, only Moricz has any relation to SBSC. Specifically, Moricz was a Senior at Pine View School that graduated in **May 2022**. Dkt. 47 ¶ 44 (“Moricz is an 18-year-old who recently graduated from Pine View School”). Because H.B. 1557 does not take effect until **July 1, 2022**, however, Moricz cannot show that he has either been directly affected by the passage of H.B. 1557 or faces any substantial risk of certain *future* harm. Specifically, any claim for injunctive relief based on the prospect of future injury is impossible here as Moricz, as a new graduate, can never possibly be harmed by this law or by the actions of SBSC moving forward. Accordingly, the existence of an *imminent* future injury is impossible here.

Regarding *past* alleged harms to Moricz by SBSC that have already occurred, in Count II of the Complaint, “Plaintiffs” (which includes Moricz) conclusory assert that an equal protection “deprivation” occurred. *See* Dkt. 47 ¶ 275. Thereafter in the “Prayer for Relief,” a conclusory claim for damages based on “pain and suffering experienced by Moricz as a result of the censorship of his high school graduation speech” is asserted. *Id.* ¶ 315. But that too is impossible, as Moricz’s only alleged censorship, by his own admission, was relating to his activism, (*see* Dkt. 47 ¶ 174),

and it is unclear how such alleged censorship of activism constitutes an equal protection violation.

Quite simply, although Moricz represents a member of a protected class (as a gay man), nowhere in the Complaint does he allege that he was treated differently on this basis. Rather, the Complaint makes clear that Moricz was only ever directed that his commencement speech “could not include *material related to his activism*, including his activism against H.B. 1557 or his participation in this lawsuit.” Dkt. 47 ¶ 174 (emphasis added). In addition to being neither concrete nor credible, at best, Moricz’s claim of self-censorship here is similarly insufficient to state a cognizable claim for past injury as it represents a “mere assertion of a chill.” *See Restoration Assoc. of Fla., Inc.*, at *4 (quoting *Dermer*, 599 F.3d at 1221).

For their part, the other Plaintiffs in Count I-V similarly fail to raise any *concrete* or *particularized* threat of future injury as it relates to SBSC. Importantly, these remaining Plaintiffs have not plead any claims of past harm by SBSC. As detailed above, as current students, parents, and teachers with no connection to SBSC or Sarasota County as a whole, none of the remaining individual Plaintiffs can state a claim for injury against SBSC, **nor do they try**. Additionally, neither Equality Florida nor Family Equality (the “Organizational Plaintiffs”) can state a claim against SBSC. *Speech First, Inc. v. Cartwright*, 32 F. 4th. 1110, 1119 (11th Cir. 2022) (quoting *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S.

167, 181, 120 S.Ct. 693, 145 L. Ed. 2d 610 (2000)) (ruling that, like the Organizational Plaintiffs here, plaintiffs only “[have] standing to bring suit on behalf of its members when its members would *otherwise have standing to sue in their own right...*”).

Importantly, here, the Organizational Plaintiffs have failed to raise any allegation that their members have standing against SBSC in their own right. In fact, as detailed above, the Complaint is devoid of any allegation from any resident of Sarasota County outside of Moricz. At best, the remaining representative Organizational Plaintiffs are mere “concerned bystanders” who have pled no specific ties to Sarasota County or SBSC amongst its membership, which is insufficient to show that an injury-in-fact was committed specifically by SBSC. *See Koziara v. City of Casselberry*, 392 F.3d 1302, 1305.

While these Organizational Plaintiffs may argue that they have standing against SBSC *regarding the state-level Defendants* to challenge the constitutionality of H.B. 1557, and may even possess the ability to potentially obtain injunctive relief against them, based on the utter lack of pled ties to SBSC or Sarasota County – either on its own or through its members – the Organizational Plaintiffs lack standing *regarding SBSC*.

Moreover, while Counts I-V of the Complaint target H.B. 1557 on various constitutional grounds, SBSC had no involvement in the drafting of the law. Notably,

Plaintiffs do not even claim as much. Nor has the law even become effective yet. Rather, Plaintiffs make conclusory allegations that “H.B. 1557 has already stigmatized and singled out LGBTQ students such as ... Moricz ... as inferior and unequal in public school settings,” and “disparately harms LGBTQ students ... and denies such students equal educational opportunities based on their LGBTQ orientation or identity.” Dkt. 47 ¶¶ 281–82. To the extent this has created an “injury-in-fact,” it was created by the drafters of H.B. 1557; not the school districts required to implement it once it becomes effective July 1, 2022.

As discussed further below, the only plausible “deprivation” pled by the Plaintiffs as it relates to SBSC involves the alleged censorship of Moricz. Because the Complaint pleads no other facts that can be interpreted as deprivations by any other Plaintiffs in Count I-V against SBSC, none of these Plaintiffs have established that SBSC has committed an injury-in-fact against them sufficient to confer them standing.

b. Causal Connection

“A plaintiff ... need not show ... that the defendant's actions are the very last step in the chain of causation.” *Dream Defs. v. DeSantis*, 553 F. Supp. 3d 1052, 1078 (N.D. Fla. 2021). “[E]ven harms that flow indirectly from the action in question can be said to be ‘fairly traceable’ to that action for standing purposes.” *Id.* (quoting *Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir.

2003)). In *Dream Defs.*, the Northern District ruled that, as it related to the defendant sheriffs, the “challenged action” was “their enforcement of the challenged statutory provisions that cause Plaintiffs’ injuries — i.e., self-censorship and the diversion of resources.” *Id.* at 1081. Because “[t]he provisions at issue are each enforceable by the Defendant Sheriffs...Plaintiffs’ injuries resulting from enforcement of these new provisions are traceable to the Defendant Sheriffs,” and, accordingly, the plaintiffs were considered to have standing against the Defendant Sheriffs. *Id.* at 1081–82.

As made clear, here, that is not the case with SBSC. The only ties to SBSC pled in the Complaint by any of the Plaintiffs relate to Moricz. As such, the only future “traceability” or “enforcement” by SBSC that could possibly occur against the various Plaintiffs asserting claims in Counts I-V would necessarily have to be against Moricz. Because, here, the “challenged action” of SBSC is impossible by virtue of (a) SBSC’s lack of role in the drafting of H.B. 1557. and (b) the bill’s later-date of effect, Moricz simply cannot trace an alleged injury to SBSC. Because Moricz has already graduated, there can be no “traceability” to or “enforcement” against him once the law becomes effective July 1, 2022.

Furthermore, once H.B. 1557 becomes effective, SBSC’s jurisdiction to enforce it is limited to only those schools within Sarasota County. Accordingly, SBSC has no ability to enforce the provisions of H.B. 1557 against the various other plaintiff students, parents, teachers, or organizations located outside of and without

any connection to Sarasota County. Importantly, the Organizational Plaintiffs have wholly failed to plead the existence of any members with ties, or other relationships whatsoever, to SBSC or Sarasota County. For this reason, the remaining Plaintiffs too lack “traceability.” Therefore, none of the Plaintiffs in Counts I-V can establish the causal connection required for standing based on an “enforcement” theory.

c. Likelihood of Redress

“Redressability is established when a favorable decision would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.” *Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1303–04 (11th Cir. 2011) (quoting *Mulhall v. UNITE HERE Local 355*, 618 F.3d 1279, 1290 (11th Cir. 2010).

Here, a favorable decision for Plaintiffs would be injunctive relief enjoining the implementation and enforcement of H.B. 1557. As detailed above, Moricz – who has already graduated – will not be able to show redressability for the purposes of future injunctive relief as even an injunction against H.B. 1557 would not lead to favorable relief in his case. The remaining Plaintiffs, meanwhile, seek only “[p]ermanent injunctive relief enjoining Defendants from implementing and enforcing H.B. 1557...” Dkt. 47 ¶ 314. But, as detailed above, none of the remaining Plaintiffs bear any connection to SBSC. Accordingly, there is no possibility of redressability for Plaintiffs and against SBSC via injunctive relief. Because injunctive

relief against SBSC in favor of the remaining Plaintiffs would provide redress for no one, Plaintiffs lack standing for this reason as well.

In fact, the only possible redressability any of the Plaintiffs in Counts I-V can establish against SBSC involves an alleged “deprivation” of rights that has already occurred. As detailed in the Complaint and above, only Moricz could even possibly obtain relief that would redress any purported injury suffered at the hands of SBSC. But, as explained below, the only “deprivation” pled by Moricz involves a purported deprivation of equal protection rights pursuant to § 1983. Notably, however, Moricz has failed to generally state a valid § 1983 claim and specifically an equal protection claim. Therefore, for this reason as well, none of the Plaintiffs, including Moricz, can establish redressability such that they possess standing against SBSC.

III. Dismissal of Counts I-V is Proper Because Plaintiffs Have Failed to State a Valid § 1983 Claim Against SBSC in Each of these Counts.

“In order to state a claim under 42 U.S.C. § 1983, a plaintiff must allege that ‘some person, acting under color of state law, deprived plaintiff of rights, privileges, or immunities secured by the Constitution and laws of the United States.’” *Hamilton v. Hall*, 790 F. Supp. 2d 1368, 1370 (N.D. Fla. 2011) (quoting *Blanton v. Griel Mem'l Psychiatric Hosp.*, 758 F.2d 1540, 1542 (11th Cir. 1985); 42 U.S.C. § 1983).

In each of Counts I, III, IV, and V, Plaintiffs raise purely constitutional challenges to H.B. 1557 itself. However, nowhere within these challenges to this

legislation – which has not yet even become effective as law – as raised in these specific counts do any of the various Plaintiffs allege that SBSC either specifically had any involvement in its passage or that, as a result of its passage, SBSC has “deprived” these Plaintiffs of a right secured under the Constitution or federal law. Moreover, nowhere within Counts I-V do any of the various Plaintiffs specifically allege that any “deprivation”, whether related to the constitutionality of H.B. 1557 or otherwise, has occurred “under color of state law”. Furthermore, in the specific counts of the Complaint that only challenge H.B. 1557’s constitutionality, the failure to plead how SBSC was involved with its passage is a failure to allege SBSC “deprived” any of these Plaintiffs in these counts. Thus, no Plaintiff has stated a valid § 1983 claim in Counts I, III, IV, and V against SBSC, and SBSC is entitled to dismissal of Counts I, III, IV, and V on this basis alone.

Moreover, regarding Count II specifically, although it is vaguely and conclusory pled (which makes it difficult to understand exactly what is being asserted by each Plaintiff against each Defendant), when read in a light most favorable to Plaintiffs, the Complaint appears to raise challenges as to the constitutionality of H.B. 1557 while also asserting that the Defendants to Count II are depriving the six (6) Plaintiffs of their equal protection rights. *See* Dkt. 47 ¶¶ 273–85. Specifically, at paragraph 275 of the Complaint, Plaintiffs assert that “Defendants have deprived Plaintiffs of the rights, privileges, or immunities

secured by the Equal Protection Clause because Defendants, without justification have treated Plaintiffs differently from other similarly situated persons based on their sex, sexual orientation, gender, gender identity, and transgender status.”⁵⁶ Importantly, however, Count II fails to indicate *how* specifically the rights of these six (6) Plaintiffs were deprived by “all Defendants”.

Even if, for the purposes of reading the Complaint to include a claim against SBSC in this specific count, “Defendants” is read to include SBSC and “Plaintiffs” is read to include Moricz such that a valid “deprivation” has been pled against SBSC, Plaintiffs will still have failed to plead a valid § 1983 claim here. Specifically, as detailed above, Plaintiffs have failed to plead that they were so deprived “under color of state law.” Thus, SBSC is also entitled to dismissal of Count II for this reason as well.

IV. Count II Fails to State a Valid Claim of an Equal Protection Violation Against SBSC.

One of the claims asserted in Count II alleges a deprivation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. In fact, a close review of the entire Complaint reveals Count II is the Complaint’s only count that even arguably asserts a deprivation of rights by SBSC.

⁵ Count II – while doing so in a conclusory manner – is the only count that includes a plain statement of a “deprivation” by Defendants. The assertions in the other counts, meanwhile, focus on the constitutionality of H.B. 1557.

⁶ The use of “Defendants” and “Plaintiffs” in paragraph 275 is yet another example of an improper “shotgun pleading” that is discussed *supra* in Section I., above.

“To show an equal protection violation, [a plaintiff] needs to show that he was treated differently than persons similarly situated and ‘that the defendant acted with intent to discriminate’, based on a constitutionally protected interest.” *Drisin v. Florida International University Board of Trustees*, 16-24939-CIV-WILLIAMS, 2019 WL 289581 at *13 (S.D. Fla. 2019) (citing *Radford v. Smith*, 2005 WL 2237603 at *1 (S.D. Ga. 2005)).

Even when viewed in a light most favorable to Plaintiffs, the only remotely plausible deprivation by SBSC of anyone’s rights revolves exclusively around the incidents surrounding Moricz’s May 22, 2022 graduation speech. *See* Dkt. 47 ¶¶ 174–77. Again, even if “Defendants” in Count II of the Complaint is meant to include SBSC, “Plaintiffs” is meant to include Moricz, and the “deprivations” alluded to in paragraph 275 is meant to include the incidents described in paragraphs 174–77 of the Complaint, SBSC is similarly entitled to dismissal here as nowhere in the Complaint does any Plaintiff allege that SBSC “acted with the intent to discriminate”—a polestar of an equal protection claim. As a result, SBSC is entitled to dismissal of Count II for this reason as well as the Complaint wholly fails to state a valid claim for deprivation of any of the six Plaintiffs’ (including Moricz’s) equal protection rights.

V. Dismissal is Proper Based on Improper Venue

For all of the reasons detailed above, SBSC contends Counts I–V must be dismissed. However, if this Court were to determine that Moricz has pled a valid § 1983 claim based on a deprivation of his rights by SBSC, any such remaining claims against SBSC in this action must be dismissed for improper venue.

Plaintiffs allege that “Defendant School Board of Sarasota County is a district school board organized and governed pursuant to Fla. Stat. § 1001.34 *et seq.*,” (Dkt. 47 ¶ 89), but conspicuously omits that SBSC, as a school board, is organized and governed by the Florida Constitution as the governmental agency duly empowered to administer, manage, and operate public schools *within* Sarasota County, Florida. See, Art. IX, Sec. 4., Fla. Const.

Importantly, no allegation by the Plaintiffs has been raised that SBSC has or had any contacts with this venue. Moreover, SBSC is not alleged to have any jurisdictional authority over any of the Plaintiffs within the venue of this Court, nor is it alleged that SBSC has conducted any business activity, or been involved in any enterprise giving rise to this action with the Plaintiffs, within the venue of this Court.

Moreover, as a political subdivision, SBSC is entitled to a home venue privilege to be sued within the venue assigned to its principal geographical location—either the Twelfth Judicial Circuit in Sarasota County or the Middle

District of Florida. A court’s analysis regarding venue should “ensure that a defendant is not haled into a remote district having no real relationship to the dispute.” *See Hemispherx Biopharma, Inc. v. MidSouth Capital, Inc.*, 669 F. Supp. 2d 1353, 1357–58 (S.D. Fla. 2009). Instead of raising any allegation that SBSC has any relationship to the dispute or this District, the Complaint instead generally alleges a legal conclusion of jurisdiction and venue of this Court, as follows:

This Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because Defendants are public officials in the State of Florida, they are sued in their official capacities, and certain Defendants maintain their principal headquarters in this District. Defendants reside within this District and/or perform official duties within Florida.

Dkt. 47 ¶ 22.

As a school board within the State of Florida, SBSC has power and authority to act within the District of Sarasota County, Florida. In addition to failing to allege that SBSC has any contacts within this Court’s District, or that SBSC has engaged in any relevant action or conduct within the venue of this Court’s District, the Complaint similarly fails to raise any allegations that any of the Plaintiffs located *within* the Northern District’s geographical venue have been or will be affected by any specific action taken by or conduct of SBSC. Instead, it is only Moricz who can claim any conduct which occurred within the confines of Sarasota County. Accordingly, to the extent any claim remains in this action involving SBSC and Moricz unrelated to challenges to H.B. 1557’s constitutionality, venue

is only proper in either Florida's federal Middle District or its state Twelfth Judicial Circuit – not Florida's federal Northern District.

Since SBSC has not, through any action or conduct, submitted itself to the venue of this Court's district, SBSC has and hereby asserts its State and common law "home venue privilege" to be sued in the county where it maintains its principal headquarters. *See* § 47.011, Fla. Stat.; *School Bd. of Osceola County v. State Bd. of Educ.*, 903 So.2d 963, 966 (Fla. 5th DCA 2005). Such home venue privilege was created by common law, and among other things, the privilege is intended to "promote orderly, efficient, and economical government" by allowing governmental entities to be sued in the county of their headquarters, "where such suits can be defended at a minimum expenditure of effort and public funds." *Smith v. Williams*, 35 So. 2d 844 (Fla. 1948); *Florida Dept. of Children and Families v. Sun-Sentinel*, 865 So. 2d 1278, 1287 (Fla. 2004); *Fish & Wildlife Conservation Com'n v. Wilkinson*, 799 So. 2d 258, 263 (Fla. 2d DCA 2001).

In consideration of these principles, SBSC asserts that venue in the Northern District for any surviving § 1983 claims against SBSC based on a deprivation of rights is inappropriate and, accordingly, any such claims should be dismissed for this reason too.

WHEREFORE, based on the above, this Court must dismiss SBSC from Counts I-V of the Complaint. SBSC maintains that it is not a proper party to a

constitutional challenge to H.B. 1557 by any of the Plaintiffs as alleged in Counts I-V. SBSC additionally maintains that none of the Plaintiffs in Counts I, II, III, IV, or V have stated a valid claim against SBSC based on deprivation of rights or otherwise. Further, SBSC maintains that principles of home rule make venue in the Northern District regarding any surviving deprivation claims against SBSC inappropriate.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

Counsel for School Board of Sarasota County hereby certifies that, based on Microsoft Word's "Word Count," the forgoing Motion complies with Local Rule 7.1(f) because it contains 7,856 words.

Dated: June 27, 2022

Respectfully submitted,

/s/ Daniel J. DeLeo

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically using the CM/ECF e-filing portal, which will serve a copy on counsel of record.

Dated: June 27, 2022

Respectfully submitted,

/s/ Daniel J. DeLeo

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

No. 4:22-cv-134-AW-MJF

RON DESANTIS, in his official capacity
as Governor of Florida, et al.,

Defendants.

**STATE DEFENDANTS’ MOTION TO DISMISS
AND INCORPORATED MEMORANDUM OF LAW**

H.B. 1557—Florida’s Parental Rights in Education bill—was enacted in response to reports that some public-school officials were concealing from parents information about the sexual orientation and gender identity of their children. Once it takes effect, the bill will safeguard parents’ right to direct the upbringing of their children by requiring, among other things, that public-school officials notify parents of changes in the mental health and well-being of their children and encourage children to discuss sensitive matters with their parents.

Plaintiffs challenge a provision of H.B. 1557 that removes the subjects of “sexual orientation” and “gender identity” from Florida’s public-school curricula for kindergarten through the third grade and, after that, leaves teachers free to instruct on those subjects in a manner that is “age-appropriate [and] developmentally

appropriate for students in accordance with state standards.” An Act Relating to Parental Rights in Education, Ch. 2022-22 (H.B. 1557), § 1, Laws of Fla. (2022). Falsely dubbed by its opponents the “Don’t Say Gay” bill, *see* ECF 47 ¶ 1, H.B. 1557 is nothing of the sort. Far from banning discussion of sexual orientation and gender identity, the legislation expressly allows age and developmentally appropriate education on those subjects. Consistent with that modest limitation, the law prohibits classroom instruction on sexual orientation and gender identity for the youngest children, neutrally allowing *all* parents, no matter their views, to introduce those sensitive topics to their children as they see fit.

Plaintiffs’ effort to convince the public that H.B. 1557 “would deny to an entire generation that LGBTQ people exist and have equal dignity,” ECF 47 ¶ 2, is fearmongering at best. Nothing in the bill suggests that “the only ‘appropriate’ families, students, and teachers are straight and cisgender ones.” *Id.* ¶ 6. The point of the challenged provision is to leave instruction on such matters to parents rather than state officials at least until the fourth grade, at which point the concepts of sexual orientation and gender identity may be introduced in a manner consistent with “state standards” that have not yet been adopted and need not be adopted until June 30, 2023. When the bill takes effect on July 1, 2022, students, parents, and even teachers will remain free to express themselves as long as they do not “instruc[t]” the youngest children “on” those concepts in public-school classroom settings. H.B.

1557 § 1. The bill does not prohibit, for example, mere classroom references to a person’s family—whether gay or straight, transgender or cisgender.

This pre-enforcement, facial challenge alleges principally that H.B. 1557’s provision regulating the curriculum of Florida’s public schools violates the First Amendment and the Equal Protection Clause. For the reasons discussed below, Plaintiffs lack standing and much of the relief they seek is barred by sovereign immunity.

There is also nothing unlawful about H.B. 1557. Because a public-school teacher is a government employee whose “job is to speak in the classroom on the subjects she is expected to teach,” her lessons are “not the speech of a ‘citizen’ for First Amendment purposes.” *Brown v. Chi. Bd. of Educ.*, 824 F.3d 713, 715 (7th Cir. 2016) (citing *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)). Beyond that, states have broad authority to determine the content of public-school curricula in a manner that is “reasonably related to legitimate pedagogical concerns.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988). Here, the State has removed sensitive content from its curricula because it is “inappropriate for the age group.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 880 (Blackmun, J., concurring). That is perfectly constitutional because “a school must be able to take into account the emotional maturity of the intended audience.” *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517, 1521 (11th Cir. 1989) (cleaned up).

Plaintiffs’ equal-protection claim fares no better. The bill subjects no one “to discriminatory treatment.” *Aaron Priv. Clinic Mgmt. LLC v. Berry*, 912 F.3d 1330, 1338 (11th Cir. 2019) (cleaned up). Rather, it establishes an educational standard that, for each grade level, affects classroom instruction equally. And the bill does so neutrally, limiting all classroom instruction on “gender identity” and “sexual orientation,” not only instruction on transgender identity and homosexuality.

Interpretative questions about the bill will of course present themselves, as is true of any law. But the meaning of H.B. 1557 is readily apparent, so it is not even close to “standardless,” *United States v. Estrada*, 969 F.3d 1245, 1265 (11th Cir. 2020) (cleaned up), which dooms Plaintiffs’ vagueness challenge.

The complaint should be dismissed.

STATEMENT OF THE CASE

1. Leading up to the 2022 Regular Session of the Florida Legislature, the Leon County school board was sued for “withholding information from . . . parent[s] regarding their student’s gender transition at school.” Fla. H.R., CS/CS/HB 1557 (2022) Final Staff Analysis at 4–5 (Mar. 28, 2022), <https://www.flsenate.gov/Session/Bill/2022/1557/Analyses/h1557z.EEC.PDF> (citing Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, TALLAHASSEE DEMOCRAT (Nov. 16, 2021), <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued->

over-lgbtq-guide-transgender-lgbtqguide/6342695001/). That was no isolated incident. For example, the “Clay County School Board [wa]s being sued by parents” alleging that “school officials hid their 12-year-old daughter’s mental health and gender identity issues for months – only informing them after the child attempted suicide in the school bathroom on two separate occasions.” *Another Florida School Board Sued over Concealing Gender Identity Counseling from Parents*, TALLAHASSEE REPORTS (Jan. 30, 2022), <https://tallahasseereports.com/2022/01/30/another-florida-school-board-sued-over-concealing-gender-identity-counseling-from-parents/>.

As legislative staff noted, those incidents were symptomatic of a broader issue: “multiple school districts in Florida maintain[ed] policies that exclude[d] parents from discussions and decisions on sensitive topics relating to students.” CS/CS/HB 1557 Final Staff Analysis at 4 & nn.25–26, <https://www.flsenate.gov/Session/Bill/2022/1557/Analyses/h1557z.EEC.PDF> (identifying Leon, Broward, Palm Beach, Miami-Dade, Sarasota, Volusia, and Hillsborough County policies). Miami-Dade County was instructing teachers that, “[w]hen contacting the parent/guardian of a transgender or gender expansive student, school staff should use the student’s legal name and the pronoun corresponding to the student’s assigned sex at birth, unless the student or parent/guardian has specified otherwise.” *2020-2021 Guidelines for Promoting Safe*

and Inclusive Schools, MIAMI-DADE COUNTY PUBLIC SCHOOLS at 7 (July 2020), <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf> (cited at ECF 47 ¶ 107 & n.9). Broward County went even further, instructing teachers that (1) they would be in violation of federal law if they divulged students' LGBTQ status to their parents, (2) they must lie in response to parents' questions about such issues, and (3) they could not even "encourage . . . a student to be 'out' at home." *LGBTQ+ Critical Support Guide*, BROWARD COUNTY PUBLIC SCHOOLS at 26–29 (2012), <https://defendinged.org/wp-content/uploads/2022/05/BCPS-LGBTQ-Critical-Support-Guide-III-Edition-2020.pdf> (cited at ECF 47 ¶ 108 & n.11).¹ Duval, Hillsborough, Pinellas, and Volusia counties were giving the same direction to their teachers.²

¹ In support of this directive, Broward relied on a case about a police officer who threatened to "out" an arrestee, leading to the arrestee's suicide. *LGBTQ+ Critical Support Guide*, BROWARD COUNTY PUBLIC SCHOOLS at 27–29 (citing *Sterling v. Borough of Minersville*, 232 F.3d. 190, 196 n.4 (3d Cir. 2000)).

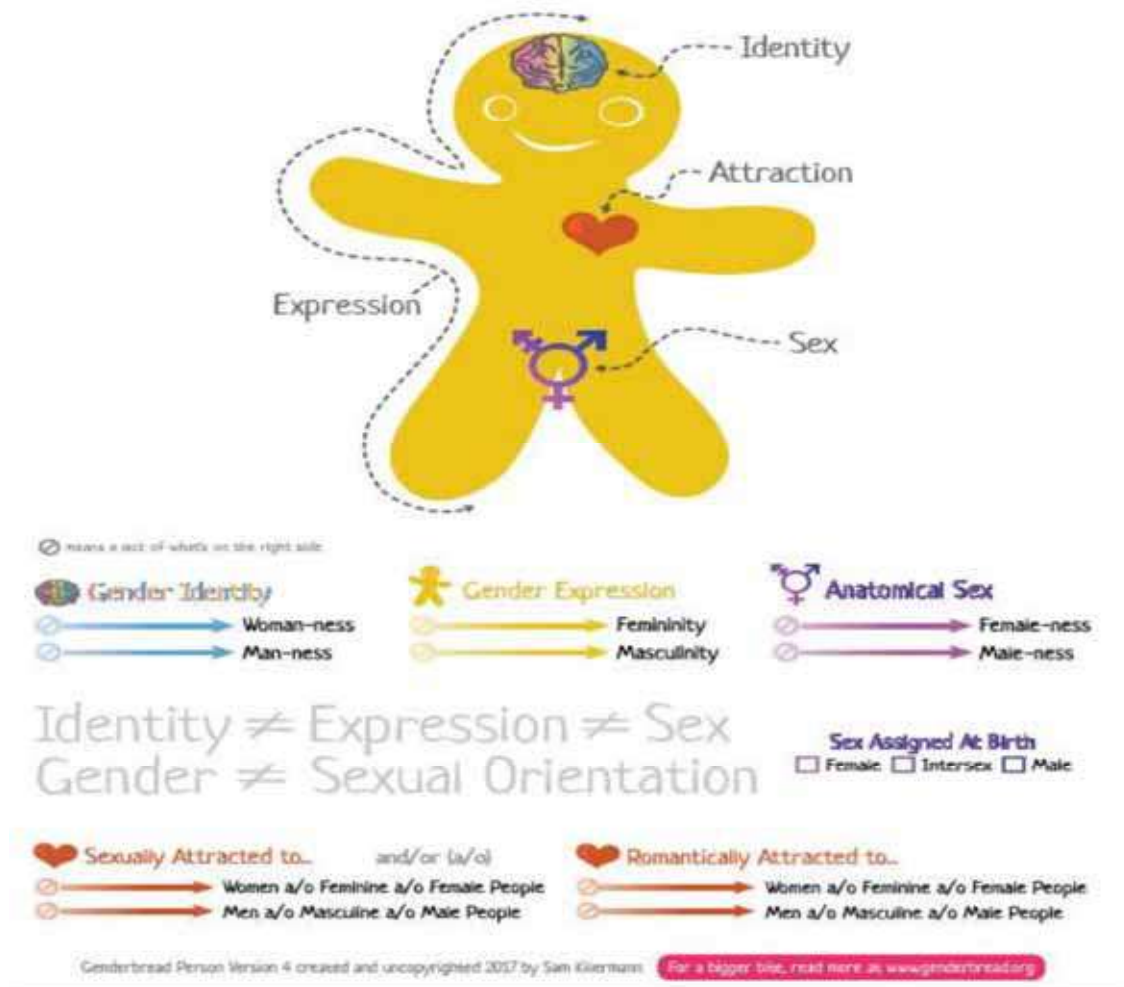
² *LGBTQ+ Support Guide*, DUVAL COUNTY PUBLIC SCHOOLS at 12 (2020), https://s3.documentcloud.org/documents/21988102/dcps_lgbtq_support_guide_2020.pdf (cited at ECF 47 ¶ 109 & n.15); *LBGTQ+ Critical Resource and Support Guide for Staff*, HILLSBOROUGH COUNTY PUBLIC SCHOOLS at 16 (2021), <https://www.wfla.com/wp-content/uploads/sites/71/2022/02/Hillsborough-Schools-LGBTQ-Critical-Resource-Guide-2021-08.31.21.pdf> (cited at ECF 47 ¶ 109 & n.15); *Inclusive Schools Support Guide: Promoting Safe and Inclusive Schools*, PINELLAS COUNTY SCHOOLS at 22–23 (2020), http://www.pccpta2020.com/wp-content/uploads/2021/09/Inclusive-Schools-Support-Guide_FINAL_5.28.20.pdf (cited at ECF 47 ¶ 109 & n.15); *LGBTQ Support Guide*, VOLUSIA COUNTY SCHOOLS

At the same time, some Florida school boards had published “Guidelines for Curriculum” that encouraged teachers to “include affirmative topics about LGBTQ+ persons in curriculum and classroom discussions” and admonishing that “[n]o parental notification is needed for these classroom discussions.” *School District of Palm Beach County LGBTQ+ Critical Support Guide*, PALM BEACH COUNTY SCHOOL DISTRICT at 80 (2021), https://www2.palmbeachschools.org/caringfirst/resources/lgbtq_critical_support_guide.pdf. The Guidelines referred to, for example, “the Genderbread Person,” a widely publicized infographic of an anthropomorphic gingerbread cookie designed to teach young children the concepts of sexual orientation and gender identity:

at 11 (2020), <https://beacononlinenews.com/wp-content/uploads/2022/03/VCS-LGBTQ-Support-Guide-2020.pdf> (cited at ECF 47 ¶ 109 & n.15).

School District of Palm Beach County LGBTQ+ Critical Support Guide

The Genderbread Person v4 its pronounced METROsexual



27

Id. at 27; see also *The Genderbread Person*, <https://www.genderbread.org/> (last visited June 26, 2022); *Parent References ‘GenderBread Person’ in Public Testimony on Parental Rights in Education Bill*, TALLAHASSEE REPORTS (Mar. 3, 2022), <https://tallahasseeereports.com/2022/03/03/parent-references-genderbread-person-in-public-testimony-on-parental-rights-in-education-bill/>.

Some parents objected to this type of instruction. Parents complained, for example, that their son's second-grade teacher had taught a book entitled *Call Me Max* during story time. See Lois K. Solomon, *Florida School District Pulls 2 Books about Transgender Kids, Including 'I Am Jazz'*, SOUTH FLORIDA SUN-SENTINEL (Apr. 6, 2022), <https://www.sun-sentinel.com/local/schools/fl-ne-pbc-trans-books-20220406-hkgksij32bcbpod46uclprerlu-story.html>. Like the Genderbread Person, *Call Me Max* teaches the concept of gender identity. The book attempts to explain, using child-friendly illustrated terms, the definition of "transgender." Kyle Lukoff, *Call Me Max* 4 (2019). It continues: "When a baby grows up to be transgender, it means that the grown-up who said they were a boy or a girl made a mistake." *Id.* at 5. The protagonist of the book also explains that "[w]hen I looked in the mirror, I saw a girl. Kind of. But because I'm transgender, I wanted to see a boy." *Id.* at 6.



Lukoff at 6–7.

And among many other examples, Broward County was directing teachers to respond to kindergarteners “when answering classroom questions that may arise” that “Gay (for grades Pre-K-2)” means “[a] person who has romantic feelings for someone of the same gender” and “Transgender (Grades K-4)” means that “[w]hen a baby is born, they are given a gender. Transgender people change their gender once they are old enough to explain to others how they feel about their own gender. This person may change their name or pronoun.” *LGBTQ+ Critical Support Guide*, BROWARD COUNTY PUBLIC SCHOOLS at 10, 12. Broward further directed that “[n]o parental notification is needed for these classroom discussions.” *Id.* at 54.

“National Sex Education Standards” in use by many Florida school districts also provided that, “[b]y the end of the 2nd grade, students should be able to: Define gender, gender identity, and gender-role stereotypes.” *National Sex Education Standards*, FUTURE OF SEX EDUCATION INITIATIVE at 19 (2d ed. 2020), <https://www.advocatesforyouth.org/wp-content/uploads/2021/11/NSES-2020-web-updated2.pdf>. And “[b]y the end of the 5th grade, students should be able to: Distinguish between sex assigned at birth and gender identity and explain how they

may or may not differ,” and “[d]efine sexual orientation.” *Id.* at 21–22; *see also* Fla. S., recording of proceedings, at 2:07–08 (Mar. 7, 2022) (discussing the standards).³

2. The Florida Legislature responded by enacting H.B. 1557, which will take effect on July 1, 2022. Entitled “[a]n act relating to parental rights in education,” the legislation will “reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children” in two principal ways. H.B. 1557, Preamble.

First, the bill requires transparency with parents regarding the health and well-being of their children. The bill, for instance, requires school districts and their personnel to encourage students to discuss their well-being with their parents. H.B. 1557 § 1. The bill further requires school boards to “notify parents [annually] of each healthcare service offered at their student’s school and the option to withhold consent or decline any specific service.” *Id.* School boards must also “adopt procedures for notifying a student’s parent if there is a change in the student’s services or monitoring related to the student’s mental, emotional, or physical health or well-being,” and “[b]efore administering a student well-being questionnaire or health screening form to a student in kindergarten through grade three, the school district must provide the questionnaire or health screening form to the parent and

³ <https://thefloridachannel.org/videos/3-7-22-senate-session-part-3/>.

obtain the permission of the parent.” *Id.* The bill prohibits school districts from discouraging discussion of their children’s health with parents, particularly “critical decisions affecting a student’s mental, emotional, or physical health,” *id.*, such as a potential gender transition. But school districts may establish procedures for withholding “such information from a parent if a reasonably prudent person would believe that disclosure would result in abuse, abandonment, or neglect.” *Id.*

Second, the bill regulates public-school curricula. “Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.” H.B. 1557 § 1. In other words, “[c]lassroom instruction . . . on sexual orientation or gender identity” is permissible so long as it is “age-appropriate [and] developmentally appropriate for students in accordance with state standards,” subject to a bright-line rule that classroom instruction on those topics is *not* age-appropriate or developmentally appropriate “in kindergarten through grade 3.” *Id.*

State standards for “age-appropriate [and] developmentally appropriate” instruction after grade three must be promulgated by the Department of Education by June 30, 2023. H.B. 1557 § 2. That has not yet happened.

3. The Governor signed H.B. 1557 into law on March 28, 2022, and Plaintiffs filed this lawsuit three days later. The operative complaint was served on May 25, 2022.

Plaintiffs are K-12 students, parents of K-12 students, two K-12 teachers, and two organizations. Specifically:

- Plaintiffs M.A., Doe, and S.S. are students currently enrolled in grade five or higher (collectively, “the Student Plaintiffs”). Each is gay or transgender. ECF 47 ¶¶ 30–43, 49–59. They bring a void-for-vagueness claim, as well as claims under the Equal Protection Clause, the First Amendment, and Title IX. M.A. and Doe are minors and therefore bring their claims through their parents (respectively, Plaintiffs Armstrong, McClelland, and Schulman).
- Plaintiff Moricz is a recent high school graduate. He is gay. ECF 47 ¶¶ 44–48. He brings a void-for-vagueness claim, as well as claims under the Equal Protection Clause, the First Amendment, and Title IX.
- Plaintiffs Morrison, Houry, Dan and Brent VanTice, Casares, and Feinberg are parents of K-3 students (collectively, “the Parent Plaintiffs”). Each is gay or lesbian. None alleges that his or her child is gay, lesbian, or transgender. ECF 47 ¶¶ 60–72. They bring void-for-vagueness and equal-protection claims.
- Plaintiff Shook is the parent of a K-3 student. She alleges that she is heterosexual and does not allege that her child is gay or transgender. ECF 47 ¶¶ 73–74. Plaintiff Volmer likewise is the parent of K-3 students. She alleges that she is heterosexual and does not allege that her children are gay, lesbian, or transgender. *Id.* ¶¶ 75–77. Plaintiffs Shook and Volmer bring only a void-for-vagueness claim.
- Plaintiff Berg is an elementary school art teacher. He is gay and alleges that his students range from pre-K through fifth grade. ECF 47 ¶ 78. He brings void-for-vagueness and equal-protection claims.

- Plaintiff Washington is a middle-school civics and drama teacher. She does not allege that she is a lesbian or transgender. ECF 47 ¶¶ 79–81. She brings only a void-for-vagueness claim.
- Equality Florida is a non-profit organization. The only members of Equality Florida specifically identified in the complaint are the VanTice parents, Ms. Houry, and Ms. Washington, who are also plaintiffs. ECF 47 ¶¶ 25–27. Family Equality is a non-profit organization that does not identify any specific members in its allegations. *Id.* ¶¶ 28–29. Equality Florida and Family Equality bring a void-for-vagueness claim, as well as claims under the Equal Protection Clause, the First Amendment, and Title IX.

To summarize the claims another way: The void-for-vagueness claim is brought by all plaintiffs. The equal-protection claim is brought by all plaintiffs except Shook, Volmer, and Washington. And the First Amendment and Title IX claims are brought by the Student Plaintiffs, Moricz, Equality Florida, and Family Equality.

Defendants are Florida Governor Ron DeSantis, Florida Commissioner of Education Manny Diaz, the Florida Department of Education, the Florida Board of Education, each of the members of the Board (collectively, “the State Defendants”), and several district school boards (the “School Board Defendants”).

LEGAL STANDARD

At the pleadings stage, the Court must “assume the veracity of well-pleaded factual allegations” but must not credit mere “labels and conclusions.” *Newbauer v. Carnival Corp.*, 26 F.4th 931, 934 (11th Cir. 2022) (cleaned up). The well-pleaded allegations, “accepted as true,” must be sufficient “to state a claim to relief that is

plausible on its face.” *Id.* (cleaned up). The alleged facts must be “more than merely *possible*, and a plaintiff’s factual allegations that are merely consistent with a defendant’s liability will not be considered facially plausible.” *Id.* (cleaned up; emphasis in original). A claim is plausible only “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The analysis is “not formulaic; instead, determining whether a complaint states a plausible claim for relief is . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense in reviewing the plaintiff’s allegations.” *Id.* (cleaned up).

ARGUMENT

The amended complaint must be dismissed because plaintiffs lack standing. *See* Fed. R. Civ. P. 12(b)(1). The complaint also fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).

I. STATUTORY CONSTRUCTION

Because the proper interpretation of H.B. 1557’s regulation of classroom instruction cuts across every issue in the case, it makes sense to start there.

Plaintiffs paint the bill as “discriminatory” because, they say, “it aims at sexual orientations and gender identities that differ from heterosexual and cisgender identities,” “us[es] broad and vague terms to define its prohibitions,” and “recruits

every parent as a roving censor, armed with a legal warrant to sue schools for damages whenever they believe a teacher, any other ‘school personnel,’ or any ‘third party’ has provided any ‘classroom instruction’ that may be perceived as relating to ‘sexual orientation’ or ‘gender identity.’” ECF 47 ¶¶ 15, 3, 5 (emphasis omitted).

None of that is correct. To the contrary, H.B. 1557 is clear in its prohibition, neutral as to sexual orientation and gender identity, and narrow in its remedial scheme.

The bill provides in pertinent part: “Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards,” which shall be adopted by the Department of Education by “June 30, 2023.” H.B. 1557 §§ 1–2.

As a threshold matter, only the instructional restriction applicable to kindergarten through third grade takes effect on July 1, 2022. For older children, the bill ties the prohibition of instruction that is not “age-appropriate” or “developmentally appropriate” to “state standards” that have not yet been adopted and need not be adopted for another year. As the Florida Department of Education has made clear, that restriction “takes effect only after the Florida Department of Education (Department) develops rules or guidance on age-appropriate and

developmentally appropriate instruction.” Memo from J. Oliva to School District Superintendents, *House Bill 1557, Parental Rights in Education, School District Responsibilities*, FLORIDA DEPARTMENT OF EDUCATION at 1 (June 6, 2022), <https://info.fldoe.org/docushare/dsweb/Get/Document-9559/dps-2022-68.pdf>.

Contrary to Plaintiffs’ assertions, the curricular restriction for Florida’s youngest public-school children, which does take effect July 1, is not discriminatory. The statute limits classroom instruction on “sexual orientation or gender identity.” Nothing in that language “aims at sexual orientations and gender identities that differ from heterosexual and cisgender identities.” ECF 47 ¶ 15 (emphasis omitted). To the contrary, instruction on “the normalcy of opposite-sex attraction” would equally be “instruction on sexual orientation.” *Id.* ¶ 11. The statute is neutral on the proscribed subjects.

Plaintiffs denounce the curricular restriction as giving rise to “a host of” purportedly “intractable interpretive questions.” ECF 47 ¶ 116. But the many “questions” Plaintiffs posit flow from their misreading of the statute. There is no merit, for example, to the suggestion that the statute restricts gay and transgender teachers from “put[ting] a family photo on their desk” or “refer[ring] to themselves and their spouse (and their own children).” *Id.* ¶ 8. Those actions are not “instruction,” which is “the action, practice, or profession of teaching,” *Instruction*, *Merriam-Webster’s Dictionary* (last visited June 26, 2022), <https://www.merriam->

webster.com/dictionary/instruction; *Instruction, American Heritage Dictionary* 666 (2d ed. 1985) (defining “instruction” as “[t]he act, practice, or profession of instructing”); *id.* (defining “instruct” as “[t]o furnish with knowledge; teach”); *Instruction, Webster’s New International Dictionary* 1288 (2d ed. 1957) (defining “instruct” as “[t]o impart knowledge to, esp. methodically; to teach”), much less “classroom” instruction. For the same reason, the statute does not prohibit intervention against LGBTQ bullying, participation in extracurricular activities (such as “Gay-Straight Alliances” or books fairs), and even after-hours tutoring, ECF 47 ¶¶ 8, 118–19, 121, 184, among many other examples. That is not “classroom instruction” covered by the statute.

Even “classroom instruction” is limited only if it is “*on* sexual orientation or gender identity.” H.B. 1557 § 1 (emphasis added). In that familiar grammatical structure, the preposition “on” “indicate[s] the subject of study, discussion, or consideration.” *Merriam-Webster’s Dictionary* (last visited June 26, 2022), <https://www.merriam-webster.com/dictionary/on>; *American Heritage Dictionary* 868 (defining “on” as “[c]oncerning; about,” as in, “a book on astronomy”) (emphasis omitted); *Webster’s New International Dictionary* 1701 (defining “on” as “[i]ndicating the subject”). The bill thus restricts *instruction* on particular *subjects* (sexual orientation and gender identity), not mere discussion of them. Consistent with that view, the Legislature rejected a restriction on “encourag[ing]

classroom discussion about” the prescribed subjects in favor of a limited restriction on “classroom instruction.” *Compare* An Act Relating to Parental Rights, CS/HB1557 (Jan 21, 2022), *with* H.B. 1557 § 1.

The statute thus leaves teachers free to “respond if students discuss . . . their identities or family life,” “provide grades and feedback” if a student chooses “LGBTQ identity” as an essay topic, and answer “questions about their families.” ECF 47 ¶¶ 8, 120. For kindergarten through grade three, they simply must not handle these situations by teaching the subjects of sexual orientation or gender identity. And like other subject-matter education, that is most naturally understood in terms of the underlying concepts. For example, teaching quadratic functions is quintessential “instruction on mathematics.” So too here, “instruction on sexual orientation or gender identity” would include teaching an overview of modern gender theory or a particular view of marriage equality. But just as no one would suggest that references to numbers in a history book constitute “instruction on mathematics,” no one should think that H.B. 1557 prohibits incidental references in literature to a gay or transgender person or to a same-sex couple. *Id.* ¶ 8. Such references, without more, are not “instruction on” those topics. Nor are “refer[ences] to a student’s ‘mom’ and ‘dad’” “instruction on” cisgender identity or heterosexual orientation. *Id.* ¶ 11. Such references could be to a person of any sexual orientation or gender identity.

Plaintiffs make much of the fact that the instructional restriction applies to “third parties” in addition to “school personnel,” suggesting that the bill thereby broadly restricts not only teachers, but also students and parents. *See* ECF 47 ¶¶ 113, 208. But all that means is that schools cannot evade the bill’s limits by delegating “classroom instruction” on the prescribed topics to an individual other than a teacher, be it a parent, student, guest lecturer, or anyone else. But typical class participation and schoolwork are not “instruction,” even if a student chooses to address sexual orientation or gender identity.

Plaintiffs also cast aspersions on the bill’s remedial scheme, characterizing the parents whose rights it protects as “roving censors.” ECF 47 ¶ 5. But there is nothing unusual about “private attorneys general acts” or “statutes allowing for private rights of action.” *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 535 (2021). And if anything, the remedial scheme is narrower than that of other civil rights legislation, including 42 U.S.C. § 1983, which Plaintiffs invoke here.

Plaintiffs are likewise incorrect to suggest that, under H.B. 1557, parents may “sue schools for damages whenever they believe a teacher, any other ‘school personnel,’ or any ‘third party’ has provided any ‘classroom instruction’ that may be perceived as relating to ‘sexual orientation’ or ‘gender identity.’” ECF 47 ¶ 5. Even putting aside Plaintiffs’ gross overreading of the scope of the prohibition, *see supra* pp. 16–20, parents cannot just sue whenever they believe prohibited classroom

instruction has occurred. They may sue only to challenge an unlawful “school district practice or procedure.” H.B. 1557 § 1. Even then, before suing, parents must first exhaust two other avenues of relief by “notify[ing] the principal . . . regarding concerns under this paragraph,” and then, if “the concern remains unresolved” after 30 days, notifying the school district, which “must either resolve the concern or provide a statement of the reasons for not resolving the concern.” *Id.* Only then, with the school district’s “statement of the reasons” in hand, may the parent choose between administrative proceedings with the State Board of Education (the cost of which shall be borne by the school district) or litigation against the school district in state court.

II. SOVEREIGN IMMUNITY BARS MUCH OF THE RELIEF PLAINTIFFS SEEK.

The Eleventh Amendment bars federal-court litigation against the states unless the immunity is waived or validly abrogated by Congress. *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Under *Ex parte Young*, 209 U.S. 123 (1908), there is an exception for suits seeking prospective injunctive relief against individual state officials.

The Florida Department of Education and State Board of Education must be dismissed because they are “state agencies” and therefore do not fall within that exception. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139,

146 (1993) (“[The exception] has no application in suits against the States and their agencies, which are barred regardless of the relief sought.”).

The Governor, too, must be dismissed because Plaintiffs allege only that he “is responsible for signing H.B. 1557 into law and for taking care that the laws be faithfully executed as the Chief Executive of Florida.” ECF 47 ¶ 82. As the Eleventh Circuit has explained, a “state official is subject to suit in his official capacity” only “when his office imbues him with the responsibility to enforce the law . . . at issue in the suit.” *Grizzle*, 634 F.3d at 1319. That authority must be specific, as opposed to the “governor’s ‘general executive power,’” which is “not a basis for jurisdiction in most circumstances.” *Women’s Emergency Network v. Bush*, 323 F.3d 937, 949 (11th Cir. 2003); *see also Osterback v. Scott*, 782 F. App’x 856, 859 (11th Cir. 2019) (holding that the Florida Governor’s “general authority to enforce Florida’s laws” did not make him a proper party). The Governor has no specific authority under H.B. 1557, which is enforced by the State Board of Education and private citizens. *See supra* pp. 20–21.

The Commissioner of Education must be dismissed for much the same reason. His status as “chief educational officer of the state” and general role “in enforcing compliance with the mission and goals of the education system,” ECF 47 ¶ 85, are insufficient, and he has no “responsibility to enforce” H.B. 1557, *Grizzle*, 634 F.3d at 1319. Plaintiffs point to the Commissioner’s duty under the bill to “appoint a

special master” to make a recommendation to the State Board of Education if parents invoke their right to have the Board resolve a dispute with their local school board. H.B. 1557 § 1. The neutral role the special master plays in “resolv[ing] disputes between parties” would not make that adjudicator a proper defendant. *See Whole Woman’s Health*, 142 S. Ct. at 532 (explaining that *Ex parte Young* “does not normally permit federal courts to issue injunctions against state-court judges or clerks” because “those individuals do not enforce state laws as executive officials might; instead, they work to resolve disputes between parties”).⁴ The Commissioner, who merely appoints that neutral adjudicator, has an even more attenuated connection to the statute’s enforcement. Nor does the Commissioner’s rulemaking authority under the bill provide a basis for a suit against him. *See Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1204 (11th Cir. 2021). In any event, claims based on rulemaking authority are barred by legislative immunity. *See Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731–34 (1980).

As for the remaining State Defendants, the Section 1983 claims against them must be dismissed insofar as they seek damages. *See Grizzle*, 634 F.3d at 1319

⁴ For much the same reason, the State Board of Education and its members are improper defendants. Their role under H.B. 1557 is to approve or disapprove of the decision of the special magistrate, which (like the state court judges in *Whole Woman’s Health*) is an adjudicatory role.

(allowing suits against state officials only insofar as they seek “injunctive relief on a prospective basis”).

III. PLAINTIFFS LACK STANDING.

“[A] plaintiff has to make three showings . . . to demonstrate Article III standing.” *Support Working Animals*, 8 F.4th at 1201. “First, he must establish that he has suffered an ‘injury in fact’—an invasion of a legally protected interest that is both (1) ‘concrete and particularized’ and (2) ‘actual or imminent, not conjectural or hypothetical.’” *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). “Second, he must demonstrate that there is a ‘causal connection’ between this injury and the conduct of which he complains—*i.e.*, the injury must be ‘fairly traceable’ to the defendant’s challenged actions and not the result of ‘the independent action of some third party not before the court.’” *Id.* (quoting *Lujan*, 504 U.S. at 560). “Finally, he must show that it is ‘likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.’” *Id.* (quoting *Lujan*, 504 U.S. at 560).

The case must be dismissed for lack of jurisdiction because Plaintiffs have satisfied none of those requirements.

A. Injury-in-Fact

1. To plead injury-in-fact in this pre-enforcement challenge, Plaintiffs must allege “an intention to engage in a course of conduct arguably affected with a

constitutional interest, but proscribed by a statute, and [demonstrate that] there exists a credible threat of prosecution thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). But H.B. 1557 authorizes enforcement against *school districts*—not against students, parents, or even teachers. Plaintiffs therefore cannot show that “there exists a credible threat of prosecution” against them, and thus fail to allege a “concrete and particularized” injury, *Support Working Animals*, 8 F.4th at 1201.

2. In addition, the Student Plaintiffs lack standing because they are, respectively, Fourth, Fifth, and Twelfth grade students. As discussed above, the challenged provision takes effect on July 1, 2022 only for kindergarten through grade three. *See supra* p. 17. Plaintiffs’ concerns about what “classroom instruction” may be “age-appropriate and developmentally appropriate in accordance with state standards,” ECF 47 ¶ 114, are “conjectural or hypothetical” until the State develops those standards, which need not be done until June 30, 2023. *Support Working Animals*, 8 F.4th at 1201; *see I.L. v. Alabama*, 739 F.3d 1273, 1280 (11th Cir. 2014) (“[T]he contingency of legislative action makes the redress of [an] injury speculative.” (quotations omitted)); *United States v. Thompson*, 928 F.2d 1060, 1066 (11th Cir. 1991) (no standing to enforce provision that was not “self-executing”).

The same is true for Ms. Washington, who is a middle-school teacher. She brings just one claim—that the challenged provision is void-for-vagueness. ECF 47

¶¶ 261–72. She lacks standing because, like the Student Plaintiffs, the provision is not self-executing as to her.

3. Plaintiff Moricz lacks standing for an additional reason. He graduated high school well before H.B. 1557 took effect. He therefore asserts only past injuries that are, at most, attributable to the unilateral actions of third parties other than the State Defendants and, in any event, not traceable to H.B. 1557, which does not regulate students and had not yet taken effect. In addition, Moricz lacks standing to seek prospective injunctive relief because he is not likely to face such harm again. *See City of L.A. v. Lyons*, 461 U.S. 95, 105 (1983).

4. Organizations can bring associational claims (on behalf of their members) and organizational claims (in their own right). “To establish associational standing, an organization must prove that its members ‘would otherwise have standing to sue in their own right.’” *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1249 (11th Cir. 2020) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)). To do that, they must “make specific allegations establishing that at least one identified member had suffered or would suffer harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (cleaned up); *see Jacobson*, 974 F.3d at 1249 (plaintiff lacked standing because it “failed to identify any of its members”).

Equality Florida identifies four of its members, each of whom is also a Plaintiff here—the VanTice parents, Houry, and Ms. Washington, a middle-school

teacher. ECF 47 ¶¶ 60, 68, 79, 239. Each fails to allege an injury-in-fact, as explained above, and therefore cannot support Equality Florida’s associational standing. Family Equality does not identify any of its members.

An organization can also assert an organizational claim to standing when it must divert “resources away from” its core activities because of a challenged law. *Jacobson*, 974 F.3d at 1250. But that does not mean that an organization can “convert its ordinary program costs into an injury in fact.” *Nat’l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995). That is, mine-run organizational spending cannot be a legally cognizable injury. And that is all Plaintiffs allege.

Equality Florida and Family Equality allege that they are “suffering injury to their mission and by virtue of the need to divert resources to combat an unjust law.” ECF 47 ¶ 243. Equality Florida alleges that it expended resources “to fight against the passage and implementation of H.B. 1557.” *Id.* ¶ 246. These allegations are legally insufficient. *See Nat’l Taxpayers Union*, 68 F.3d at 1434 (“The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization.” (quotation omitted)). And insofar as Family Equality alleges that it has diverted resources “address the impact of H.B. 1557” by “promoting [the] potential impact [of the bill] via op-eds, lobbying, and social media,” ECF 47 ¶ 258, “an organization’s expenditure of resources to educate its members and others

regarding government action or inaction does not present an injury in fact.” *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 925 (D.C. Cir. 2015) (Henderson, J., concurring) (cleaned up). If that were sufficient, any organization of means could easily convert a generalized grievance into an injury-in-fact by lobbying against a bill or explaining a law to its members. Article III demands more.

Equality Florida further alleges that H.B. 1557 has affected its educational mission because “there is now a ‘paralysis’ among school district leadership, which has become hesitant to engage in Equality Florida programming,” ECF 47 ¶ 254, and Family Equality alleges that H.B. 1557 “materially changes what, if anything, Family Equality can provide to Florida schools,” *id.* ¶ 256. For example, “Family Equality . . . provides a comprehensive list of the best LGBTQ books for children of all ages, including pre-K through third grade” and “fears that many of these books would not be permitted when H.B. 1557 is in effect.” *Id.* In other words, the organizational Plaintiffs believe that H.B. 1557 will interfere with their advocacy work by prohibiting state officials from agreeing with them. That is simply “not a cognizable injury” because “[a]n organization’s general interest in its preferred” result is an interest “that federal courts are not responsible for vindicating.” *Jacobson*, 974 F.3d at 1250 (cleaned up). After all, “every structural feature of government . . . makes some political outcomes less likely than others.” *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1100 (10th Cir. 2006) (en banc)

(McConnell, J.); *see id.* at 1101 (“The First Amendment ensures that all points of view may be heard[, but] it does not ensure that all points of view are equally likely to prevail.”). In short, the alleged injury is a mere “setback to [Plaintiffs’] abstract social interests, which is insufficient to establish a concrete injury in fact.” *Jacobson*, 974 F.3d at 1250 (cleaned up).

B. Traceability and Redressability

“[T]raceability and redressability . . . often travel together, and where, as here, a plaintiff has sued to enjoin a government official from enforcing a law, he must show, at the very least, that the official has the authority to enforce the particular provision that he has challenged, such that an injunction prohibiting enforcement would be effectual.” *Support Working Animals*, 8 F.4th at 1201 (internal citation omitted).

To begin with, Plaintiffs’ alleged injuries are neither traceable to H.B. 1557 nor redressable by a prospective injunction against its enforcement. As the Supreme Court explained in *Clapper*, “if the hypothetical harm alleged is not ‘certainly impending,’ or if there is not a substantial risk of the harm, a plaintiff cannot conjure standing by inflicting some direct harm on itself to mitigate a perceived risk.” *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1339 (11th Cir. 2021) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S.398, 416, 422 (2013)). As discussed above, Plaintiffs’ view of H.B. 1557 is wildly overbroad, and all of Plaintiffs’ purported

injuries (including any diversion of resources by the organizational Plaintiffs) trace to their view of the bill. In other words, their alleged injuries are traceable not to the bill, but to their own “fanciful, paranoid, [and] otherwise unreasonable” view. *Clapper*, 568 U.S. at 416.

Plaintiffs’ alleged injuries are also not traceable to the State Defendants. Because H.B. 1557 allows lawsuits only by parents and only against the policies and practices of district school boards, *see* H.B. 1557 § 1, students, parents, and teachers face no risk of enforcement from the State Defendants. And to the extent Plaintiffs nevertheless fear that district school boards will act against them, that subjective fear is not “fairly traceable to” the State Defendants’ “challenged actions,” but is instead attributable to “the independent action of” the school boards. *Support Working Animals*, 8 F.4th at 1201 (cleaned up).

For the same reason, an injunction against the State Defendants would not redress Plaintiffs’ alleged harms. Under no circumstance could Plaintiffs recover the resources they have allegedly diverted through a prospective injunction. And any ongoing harms, as noted, stem from potential actions by the school boards, which an injunction against the State Defendants would not address. *See California v. Texas*, 141 S. Ct. 2104, 2115 (2021) (remedies operate on “specific part[ies],” they “do not simply operate on legal rules in the abstract”) (cleaned up); *Jacobson*, 974 F.3d at 1254 (holding that plaintiffs lacked standing because an injunction against the

defendant would not bind the third parties who enforced the challenged law). In addition, enjoining the State Defendants would do nothing to stop parents from bringing state-court suits against school boards. *Jacobson*, 974 F.3d at 1254. “Any persuasive effect a judicial order might have upon the [parents], as absent nonparties who are not under the [State Defendants’] control, cannot suffice to establish redressability.” *Id.*

IV. PLAINTIFFS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Even if Plaintiffs had standing, the complaint must be dismissed because it fails to state a claim upon which relief can be granted.

A. Count III – First Amendment (Right to Receive Information)

Plaintiffs claim that H.B. 1557 “violates their right to receive and debate information and ideas concerning sexual orientation and gender identity.” ECF 47 ¶ 289. As a threshold matter, the legislation does not restrict “debate,” only “classroom instruction.” *See supra* pp. 18–20. And insofar as the bill limits classroom instruction, it easily survives First Amendment scrutiny.

1. “Central among the [states’] discretionary powers is the authority to establish public school curricula which accomplishes the states’ educational objectives.” *Chiras v. Miller*, 432 F.3d 606, 611 (5th Cir. 2005). And “[i]n matters pertaining to the curriculum, educators have been accorded greater control over

expression than they may enjoy in other spheres of activity.” *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517, 1520 (11th Cir. 1989).

Consistent with that broad discretion, the Fifth Circuit held in *Chiras v. Miller* that curricular decisions like the “selection of textbooks [are] government speech” and therefore not subject to traditional judicial review under the free speech clause of the First Amendment. 432 F.3d at 620. Put differently, “where the [State] is selecting textbooks for use in the classroom, students have no constitutional right to compel the [State] to select materials of their choosing.” *Id.* Because such decisions concern only “the government’s own message,” the State’s “decision is not subject to forum analysis or the viewpoint neutrality requirements.” *Id.* at 613.

In a similar case sixteen years earlier, the Eleventh Circuit concluded in *Virgil* that “[t]he most direct guidance from the Supreme Court” as to “the degree of discretion to be accorded [states] to restrict access to curricular materials” was “the” then “recent case of *Hazelwood School District v. Kuhlmeier*.” *Virgil*, 862 F.2d at 1520–21. “In *Hazelwood*, a high school principal removed several pages of a school newspaper containing an article describing a student’s experience with pregnancy and an article on the impact of divorce on students.” *Chiras*, 432 F.3d at 615 (citing *Hazelwood*, 484 U.S. at 263). “The Court found that the school newspaper was a nonpublic forum, established to allow students to express themselves within the context of the school’s curriculum and under the supervision of school officials.” *Id.*

(citing *Hazelwood*, 484 U.S. at 270). Under those circumstances, the Court held, restrictions on student speech during “activities [that] may fairly be characterized as part of the school curriculum” pass muster so long as they “are reasonably related to legitimate pedagogical concerns.” *Hazelwood*, 484 U.S. at 271, 273.

But since the Supreme Court decided *Hazelwood* (and since the Eleventh Circuit applied *Hazelwood* in *Virgil*), the Supreme Court has further developed the government-speech doctrine, and under that doctrine classroom instruction is government speech not subject to traditional First Amendment scrutiny. *See Chiras*, 432 F.3d at 617–18; *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 341–44 (6th Cir. 2010) (Sutton, J.); *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477, 479–80 (7th Cir. 2007) (Easterbrook, J.); *Nampa Classical Acad. v. Goesling*, 447 F. App’x 776, 778 (9th Cir. 2011); *cf. United States v. Am. Libr. Ass’n, Inc.*, 539 U.S. 194, 205 (2003) (plurality op.) (explaining that “forum analysis and heightened judicial scrutiny are incompatible with the . . . discretion that public libraries must have to fulfill their traditional missions”). Indeed, the Supreme Court just explained that a high school coach “instructing players” is government speech because it is the “speech the [school d]istrict paid him to produce.” *Kennedy v. Bremerton Sch. Dist.*, No. 21-418, slip op. at 17 (U.S. June 27, 2022). *Hazelwood* concerned a restriction on *student* speech during school-sponsored activities. Curricular rules like H.B. 1557, by contrast, concern the

government’s message in a classroom setting. *Chiras*, 432 F.3d at 618. And “[w]hen the government exercises the right to speak for itself, it can freely select the views that it wants to express.” *Dean v. Warren*, 12 F.4th 1248, 1264 (11th Cir. 2021) (W. Pryor, C.J.) (cleaned up).

2. Even under the *Hazelwood* test, H.B. 1557 easily passes muster. That test is “extremely lenient.” *Panama City Med. Diagnostic Ltd. v. Williams*, 13 F.3d 1541, 1545 (11th Cir. 1994). The challenged regulation need only “be ‘reasonably related’ to a legitimate state interest,” *Silverstein v. Gwinnett Hosp. Auth.*, 861 F.2d 1560, 1568 (11th Cir. 1988)—in the education context, a “legitimate pedagogical” interest. *Virgil*, 862 F.2d at 1521 (quoting *Hazelwood*, 484 U.S. at 273). The question is not what the State concluded, but what it “could reasonably have concluded.” *Hazelwood*, 484 U.S. at 275.

Under *Hazelwood*, “educators are entitled to exercise greater control over [expressive activities that might bear the imprimatur of the school] to assure that participants learn whatever lessons the activity is designed to teach [and] that readers or listeners are not exposed to material that may be inappropriate for their level of maturity.” 484 U.S. at 271. Curricular rules advance a “legitimate pedagogical concern” when they shield students from topics that are “inadequately researched” or “unsuitable for immature audiences,” including “potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting

to the particulars of teenage sexual activity in a high school setting,” or “matters of political controversy.” *Id.* at 271–72. H.B. 1557 advances all of those interests.

As discussed above, the bill neutrally limits public education on “gender identity” and “sexual orientation” conducted from any point of view. The Legislature reasonably could have concluded that the bill would thereby advance the State’s interest in educational “neutrality on matters of political controversy,” *Hazelwood*, 484 U.S. at 272, which sexual orientation and gender identity plainly are, regardless of one’s preferred orthodoxy. Indeed, the Supreme Court has acknowledged that “sexual orientation and gender identity” are “controversial subjects” and “sensitive political topics.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2476 & n.20 (2018) (citing Watanabe, *How To Teach Gay Issues in 1st Grade? A New Law Requiring California Schools to Have Lessons About LGBT Americans Raises Tough Questions*, L.A. Times, Oct. 16, 2011, p. A1).

For much the same reason, H.B. 1557 advances the State’s interest in shielding students from topics that are “potentially sensitive” and “unsuitable for immature audiences.” *Hazelwood*, 484 U.S. at 271–72. If “the existence of Santa Claus” is too “sensitive” for students “in an elementary school setting,” *id.* at 272, then the State certainly could have reasonably concluded that sexual orientation and gender identity are too sensitive for the youngest children in the same setting.

3. Plaintiffs suggest that H.B. 1557 does not advance a “legitimate” interest because it is “rooted in animus against LGBTQ individuals, as demonstrated by the public record.” ECF 47 ¶ 290. As discussed more fully below, Plaintiffs have not come close to showing that the Legislature acted out of animus against LGBTQ individuals. *See infra* pp. 43–52. But the argument fails for a more basic reason: The First Amendment does not authorize the courts to “strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.” *United States v. O’Brien*, 391 U.S. 367, 383 (1968); *see also In re Hubbard*, 803 F.3d 1298, 1313–14 (11th Cir. 2015) (holding that retaliation claims premised on “inquiry into the subjective motives of the legislators who supported enactment of a facially constitutional law” are not cognizable under the First Amendment); *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1224 (11th Cir. 2022) (“We have held—‘many times’—that ‘when a statute is facially constitutional, a plaintiff cannot bring a free-speech challenge by claiming that the lawmakers who passed it acted with a constitutionally impermissible purpose.’” (quoting *Hubbard*, 803 F.3d at 1312)).

And even if such claims were cognizable, *Hazelwood* asks not what the State’s actual motivation was, but what legitimate motives the State could have had. *Hazelwood*, 484 U.S. at 271–73. The bill reflects no governmental preference about what students should learn about sexual orientation and gender identity. Those subjects must be taught appropriately and, for the youngest children, they may be

taught by parents, not in public-school classroom settings. That is a legitimate interest.

In a slight variation of their animus argument, Plaintiffs point to *Board of Education vs. Pico* for the plurality’s statement that the State’s discretion to select school library books may not be exercised “in a narrowly partisan or political manner.” ECF 47 ¶ 288 (citing *Pico*, 457 U.S. at 870 (plurality op.)). As the Eleventh Circuit has explained, however, *Pico* was “a badly fractured decision” that is “of no precedential value as to the application of the First Amendment to these issues.” *ACLU of Fla., Inc.*, 557 F.3d at 1199–1200 (quotations omitted). Plaintiffs also overread *Pico* on its own terms. The plurality was clear that classroom instruction is different, expressing “full agreement” that States “must be permitted to establish and apply their curriculum in such a way as to transmit community values, and that there is a legitimate and substantial community interest in promoting respect for . . . traditional values be they social, moral, or political.” 457 U.S. at 864 (cleaned up). The plurality observed that States may well have “absolute discretion in matters of curriculum” given “their duty to inculcate community values.” *Id.* at 869 (emphasis in original).

Plaintiffs’ view that classroom instruction may not be regulated “in a narrowly partisan or political manner,” ECF 47 ¶ 288 (cleaned up), is thus not rooted in *Pico* at all. The view is, moreover, irreconcilable with *Hazelwood*, where all nine Justices

repeatedly emphasized that public education “demands particularized and supremely subjective choices among diverse curricula, moral values, and political stances to teach or inculcate in students[.]” 484 U.S. at 278 (Brennan, J., dissenting); *see id.* at 272 (majority explaining that because of their role as “a principal instrument in awakening the child to cultural values,” schools must determine and teach the “values of a civilized social order”). Plaintiffs’ view would also lead to intractable problems, including under the political-question doctrine because there is “‘no clear’ and ‘manageable’ way of distinguishing permissible from impermissible partisan motivation.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2505 (2019).

B. Count II – Fourteenth Amendment (Equal Protection)

Count II of the Complaint alleges that H.B. 1557 violates the Equal Protection Clause because it “was enacted with an invidiously discriminatory purpose and results in discriminatory and disparate effects” on the basis of “sex, sexual orientation, gender, gender identity, and transgender status.” ECF 47 ¶¶ 276, 275. That count must be dismissed for lack of standing because Plaintiffs fail to allege a sufficiently personalized injury under the Equal Protection Clause. *See* Fed. R. Civ. P. 12(b)(1). In any event, the allegations are insufficient to state a claim on the merits. *See* Fed. R. Civ. P. 12(b)(6).

1. Besides the reasons discussed above, *see supra* pp. 24–31, Plaintiffs lack standing to bring their equal-protection claim for another reason. Standing “often

turns on the nature and source of the claim asserted,” *Warth v. Seldin*, 422 U.S. 490, 500 (1975), and “the gravamen of an equal protection claim is differential governmental treatment, not differential governmental messaging,” *Moore v. Bryant*, 853 F.3d 245, 250 (5th Cir. 2017).

But H.B. 1557 does not subject Plaintiffs (or anyone else) to differential treatment. Like other curricular standards, it subjects all teachers at a given grade level to the same restriction on “classroom instruction” and thus operates equally on the education of all students at that grade level.

Plaintiffs make conclusory allegations that H.B. 1557 denies LGBTQ “students equal educational opportunities based on their LGBTQ orientation or identity” and “disparately harms” LGBTQ teachers and parents. ECF 47 ¶¶ 281–82; *see also id.* ¶ 275 (“Defendants . . . have treated Plaintiffs differently from other similarly situated persons based on their sex, sexual orientation, gender, gender identity, and transgender status.”); *id.* ¶ 276 (“H.B. 1557 . . . results in discriminatory and disparate effects.”); *id.* ¶ 283 (“LGBTQ married couples will be treated differently and worse than non-LGBTQ married couples,” and “the children of LGBTQ married couples will similarly suffer discrimination and disadvantage in Florida’s public schools as compared to all other children.”). But Plaintiffs do not explain *how* the bill denies equal treatment, and this Court must not credit “labels

and conclusions” pleaded in the guise of factual allegations. *Newbauer*, 26 F.4th at 934 (cleaned up).

Plaintiffs also allege stigmatic injury from the bill’s “imprimatur of discrimination.” ECF 47 ¶ 279. They believe the bill was intended to “target, demean, belittle, and harass LGBTQ individuals and families” and “reflects an effort to impose state-selected (but demonstrably outmoded and offensive) gender stereotypes as the dominant ideology.” *Id.* ¶ 277. “There can be no doubt that this sort of noneconomic injury is one of the most serious consequences of discriminatory government action.” *Allen v. Wright*, 468 U.S. 737, 755 (1984), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). But as the Supreme Court has explained, “such injury accords a basis for standing only to those persons who are personally denied equal treatment.” *Id.* (cleaned up); *see Aaron*, 912 F.3d at 1338 (same).

For example, in *Moore v. Bryant*, an African-American plaintiff sued various Mississippi officials alleging that the state flag, the upper left corner of which depicted the confederate battle flag, “violate[d] his rights under the Equal Protection Clause.” 853 F.3d at 248. Despite his allegations that the flag’s “message is ‘painful, threatening, and offensive’ to him, makes him ‘feel like a second-class citizen,’ and causes him both physical and emotional injuries,” the Fifth Circuit held that he lacked standing because “exposure to a discriminatory message, without a

corresponding denial of equal treatment, is insufficient to plead injury in an equal protection case.” *Id.* at 249–50. Likewise, in *Penkoski v. Bowser*, white plaintiffs challenged a government-sanctioned Black Lives Matter mural on equal-protection grounds, and the court held that they lacked standing because “[t]hey may, indeed, be subject to a discriminatory message” but had “made no showing [of] . . . discriminatory *treatment* because of their race.” 486 F. Supp. 3d 219, 228–29 (D.D.C. 2020) (emphasis in original).

Plaintiffs’ claim is indistinguishable. They too allege only stigma from a “discriminatory message”—the bill’s “imprimatur of discrimination.” ECF 47 ¶ 279. And their speculation that H.B. 1557 will lead “to bullying and ostracization” of LGBTQ students, *id.* ¶ 194, is more of the same—an alleged downstream effect of the same stigma, and a conjectural one at that. *See Moore*, 853 F.3d at 252 (rejecting “hostile workplace” theory of equal protection standing). The stigmatic character of their asserted injury is only confirmed by Plaintiffs’ further allegation that H.B. 1557 has already led to a reported “increase in the number of LGBTQ students experiencing harmful language or physical attacks from other members of the school community.” ECF 47 ¶ 200. Because the bill has not even taken effect, Plaintiffs’ claimed injury must be attributable to the message they believe the bill sends, not its regulatory effect.

2. Even if Plaintiffs had standing, as discussed above, the challenged provision restricts only “classroom instruction,” which is government speech. See *supra* pp. 32–34. Equal-protection claims challenging government speech are barred because “it is the very business of government to favor and disfavor points of view,” and “a government entity is entitled to say what it wishes and to select the views it wants to express,” with a notable exception for the establishment of religion. *Am. Atheists, Inc. v. Port Auth. of N.Y. & N.J.*, 760 F.3d 227, 246 (2d Cir. 2014) (cleaned up) (rejecting equal-protection claim alleging animus in the adoption of the September 11 Memorial at Ground Zero). And because the Government can express whatever views it wants, it follows that “the Equal Protection Clause does not apply to government speech.” *Fields v. Speaker of Penn. House of Representatives*, 936 F.3d 142, 161 (3d Cir. 2019); accord *Freedom from Religion Found., Inc. v. City of Warren*, 707 F.3d 686, 698 (6th Cir. 2013). That is so even where, as here, plaintiffs allege that a facially neutral provision was motivated by “discriminatory animus.” *Am. Atheists, Inc.*, 760 F.3d at 246.

Plaintiff Berg alleges that H.B. 1557 discriminates against him by restricting his “ability to be open about his gay identity in the classroom to the same extent and in the same ordinary ways that heterosexual teachers are open about their heterosexual identity,” such as putting “a picture of his husband on his desk.” ECF

47 ¶ 231. But the bill simply does not do that. As discussed above, it restricts only *classroom instruction* on the prescribed concepts. *See supra* pp. 16–20.

3. Plaintiffs have not, in any event, plausibly “plead[ed] animus.” *DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1915 (2020) (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). To do that, they “must raise a plausible inference that an ‘invidious discriminatory purpose was a motivating factor’ in the relevant decision.” *Id.* Here, that means ascertaining the underlying motivation for the decision of “the legislature as a whole,” *Brnovich v. DNC*, 141 S. Ct. 2321, 2350 (2021), a task that is demanding because “determining the intent of the legislature is a problematic and near-impossible challenge,” *Greater Birmingham Ministries v. Sec’y of State*, 992 F.3d 1299, 1324 (11th Cir. 2021). Plaintiffs must also overcome “the presumption of legislative good faith” to which the Legislature is entitled when charged with invidious discrimination. *Id.* at 1325 (citing *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018)).

Plaintiffs’ allegations do not even approach that high bar.

As the Supreme Court has explained, “discrimination is not a plausible conclusion” from the allegations in a complaint where there are “‘obvious alternative explanation[s].’” *Iqbal*, 556 U.S. at 682 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567 (2007)). Here, the challenged provision is “neutral on its face and rationally may be said to serve a purpose the Government is constitutionally

empowered to pursue.” *Washington v. Davis*, 426 U.S. 229, 246 (1976). The Legislature plainly adopted H.B. 1557 to safeguard parents’ right to educate their children about two sensitive topics, irrespective of the parents’ viewpoints. See *Greater Birmingham Ministries*, 992 F.3d at 1323 (crediting the state’s account of intent). The statute does exactly that, prohibiting classroom instruction on those topics for the youngest children (those in kindergarten through third grade) and, thereafter, permitting such instruction if it is “age-appropriate [and] developmentally appropriate for students.” H.B. 1557 § 1. Plaintiffs’ charge of animus is also irreconcilable with the fact that the statute (1) expressly *allows* classroom instruction regarding sexual orientation and gender identity after the third grade, provided it is age-appropriate, and (2) evenhandedly restricts instruction that (for example) opposes same-sex marriage as much as instruction that embraces it.

The legitimate motive for the curricular restriction is underscored by the bill’s structure. Plaintiffs have no constitutional quarrel with the bulk of the bill, which is designed to advance parental rights by ensuring that parents have transparency into the well-being of their children at school. H.B. 1557 § 1. The remedial scheme, too, is focused on parental rights, which is why it empowers only “parents” to seek relief when school boards establish policies or procedures that are inconsistent with the statute. See *id.* Likewise, the title (“An Act Relating to Parental Rights in Education”) and the staff analysis (which extensively discusses a “parent’s

fundamental right to make decisions”) reinforce the focus on empowering parents, which was repeatedly echoed during debate in the House and Senate. *E.g.*, Fla. H., recording of proceedings, at 2:37, 2:41, 2:47, 2:51, 3:12, 3:13, 4:16 (Feb. 22, 2022);⁵ Fla. H., recording of proceedings, at 2:18, 2:20, 2:45, 2:47–49, 2:51–52, 3:04, 3:11, 3:13, 3:17 (Feb. 24, 2022);⁶ Fla. S., recording of proceedings, at :36–:37, :44–:45, 1:00–01, 1:02, 1:47, 2:07–09, 2:13–14, 2:19–21, 2:43, 2:46, 3:09, 3:11, 3:32 (Mar. 7, 2022);⁷ Fla. S., recording of proceedings, at 1:53; 1:56; 2:26; 2:31 (March 8, 2022).⁸ The curricular restriction—like the rest of the bill—was designed to protect parental rights, not to demean or disparage anyone.

Where, as here, “there [a]re legitimate reasons for the . . . Legislature to adopt and maintain” a law, courts “will not infer a discriminatory purpose.” *McCleskey v. Kemp*, 481 U.S. 279, 298–99 (1987). Accordingly, courts should “ordinarily defer to the legislature’s stated intent,” and “only the clearest proof will suffice to override” that consideration. *Smith v. Doe*, 538 U.S. 84, 92 (2003) (cleaned up). Plaintiffs’ allegations come nowhere close to clearing that hurdle, especially in view

⁵ <https://thefloridachannel.org/videos/2-22-22-house-session/>.

⁶ <https://thefloridachannel.org/videos/2-24-22-house-session-part-1/>.

⁷ <https://thefloridachannel.org/videos/3-7-22-senate-session-part-3/>.

⁸ <https://thefloridachannel.org/videos/3-8-22-senate-session/>.

of the presumption of good faith to which the Legislature is entitled. *See Greater Birmingham Ministries*, 992 F.3d at 1324.

Plaintiffs respond with cherrypicked statements from the legislative record. But the statements of individual legislators do not “demonstrate discriminatory intent by the state legislature.” *League of Women Voters of Fla. v. Fla. Sec’y of State*, 32 F.4th 1363, 1373 (11th Cir. 2022). That is because “legislators who vote to adopt a bill are not the agents of the bill’s sponsor or proponents,” *Brnovich*, 141 S. Ct. at 2350, so the allegations would be insufficient to support an inference of discriminatory purpose on the part of the Legislature as a whole. After all, “[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it,” *O’Brien*, 391 U.S. at 384, and even “[t]he vote of a sponsor is only one vote” among many, *Greater Birmingham Ministries*, 992 F.3d at 1324. Thus, “[e]ven when an argument about legislative motive is backed by statements made by legislators who voted for a law,” the Supreme Court has “been reluctant to attribute those motives to the legislative body as a whole.” *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392, 2022 WL 2276808, at *18 (U.S. June 24, 2022).

In any event, Plaintiffs’ cherrypicked statements fail to evince animus even on the part of their speakers. *See* ECF 47 ¶¶ 126–131. Instead, Plaintiffs’ chosen statements reflect the desire to empower parents and ensure age-appropriate

education. Representative Harding, for example, was concerned about schools “encourag[ing]” students to hide their identity from their parents. *Id.* ¶ 129. Senator Baxley talked about “parents” being “very concerned” about “departure[s] from the[ir] core belief systems” in schools. *Id.* ¶ 126. Governor DeSantis, too, spoke of restricting the “concepts” in schools, *id.* ¶ 134, because “parents” don’t want them “injected into classroom instruction,” *id.* ¶ 135.

Plaintiffs make much of Senator Baxley’s statement about the “big uptick in the number of children who are coming out as gay” or transgender at school, going so far as to characterize his statements as “a prima facie case” of invidious discrimination. ECF 47 ¶ 127. But the presumption of legislative good faith requires that such statements be taken at their best, not their “worst.” *League of Women Voters of Fla.*, 32 F.4th at 1373. H.B. 1557 was adopted against a background of Florida schools hiding from parents that their children had “come out” at school, *see supra* pp. 4–11, and that issue, as well as other, related parental-rights issues, are the entire focus of the bill, *see supra* pp. 11–13. There is no reason to think Senator Baxley (or anyone else) had any other concern in mind. Nor in any event are stray statements probative of the Legislature’s intent as a whole when viewed against the many statements in the legislative record that are consistent with the bill’s design, purpose, and effect of safeguarding parental rights in education. *See supra* pp. 45–46 & nn.5–8.

Plaintiffs also accuse Senator Baxley of harboring discriminatory intent because, they say, he failed to provide a fellow Senator with “‘specific examples’ of why H.B. 1557 was needed in response to ‘lesson plans,’” instead inviting his colleague to “‘visit some of the websites.’” ECF 47 ¶ 141. But those websites, some of which Plaintiffs cite in their complaint, *id.* ¶¶ 104–110 & nn.4–16, reveal (just as Senator Baxley indicated) that school boards in Florida were indeed encouraging teachers to instruct young students on the concepts of sexual orientation and gender identity and even to hide related information from parents. For example, Broward County teachers were given guidance on instructing kindergartners about gender identity and sexual orientation and told that “[n]o parental notification is needed for these classroom discussions.” *LGBTQ+ Critical Support Guide* at 10, 12, 54. There were many more examples. *See supra* pp. 4–11 & nn.1–3.⁹ Senator Baxley’s response thus correctly explained that the bill’s stated purpose was to protect parental rights.

Plaintiffs next point to various proposed amendments to H.B. 1557 that were rejected but which Plaintiffs say would have “mitigate[d] the law’s” alleged discriminatory effects. ECF 47 ¶¶ 142–149. First of all, the mere fact that the “legislature did not include the alternative option[s] that Plaintiffs would have

⁹ <https://thefloridachannel.org/videos/3-7-22-senate-session-part-3/>.

preferred” is not a persuasive allegation of discriminatory intent. *Greater Birmingham Ministries*, 992 F.3d at 1327. Here, many of the rejected amendments are not even logically relevant, as most of them would have altered the substantive reach of the bill. For example, Senator Brandes proposed replacing “‘sexual orientation or gender identity’ with ‘human sexuality or sexual activity.’” ECF 47 ¶ 144. Because such amendments would not have achieved the Legislature’s objectives, rejecting them is not evidence of animus. *See Easley v. Cromartie*, 532 U.S. 234, 249 (2001) (demanding that alternatives satisfy the Legislature’s “nonracial political goals”). Other proposed amendments were simply redundant because they would have excluded items like student-to-student speech, which the enacted bill does not prohibit. ECF 47 ¶ 146.

Plaintiffs’ narrative about the amendment history is, in any event, seriously misleading. The Legislature *did* substantially amend the bill to address its opponents’ concerns. The original version restricted anything that would “encourage classroom discussion” about gender identity or sexuality. *See Kirby Wilson, Republicans made changes to ‘don’t say gay’ bill. LGBTQ advocates aren’t buying it*, TAMPA BAY TIMES (Feb. 18, 2022), <https://www.tampabay.com/news/florida-politics/2022/02/17/republicans-made-changes-to-dont-say-gay-bill-lgbtq-advocates-arent-buying-it/> (cited at ECF 47 ¶ 129 n.23). Representative Harding acknowledged that “some might find the word ‘encourage’ to be vague” and

amended the bill to restrict only “classroom instruction.” *Id.* Against that backdrop, the Court “cannot say that the legislature failed to consider . . . alternatives that would lessen any potentially discriminatory impact,” *Greater Birmingham Ministries*, 992 F.3d at 1327—indeed, it *adopted* one such alternative.

Plaintiffs’ effort to link H.B. 1557 to other allegedly discriminatory laws and actions is no more persuasive. Plaintiffs allege that “Governor DeSantis’s administration took down a Department of Education web page” with links to resources for LGBTQ youth. ECF 47 ¶ 154. But Plaintiffs do not allege that the page was redesigned out of animus. If anything, the change was consistent with the stated purpose of H.B. 1557, as the site previously recommended that teachers not “discuss sexual identity issues with parents.” *See* Brody Levesque, *Florida’s DeSantis attacks LGBTQ youth by removing website resource*, LOS ANGELES BLADE (Dec. 6, 2021), <https://www.losangelesblade.com/2021/12/06/floridas-desantis-attacks-lgbtq-youth-by-removing-website-resource/> (cited at ECF 47 ¶ 154 n.46). And it bespeaks the weakness of their animus claim for Plaintiffs to attach constitutional significance to the fact that Governor DeSantis line-item vetoed LGBTQ-related funding from the budget. ECF 47 ¶ 155. Those few line items out of \$1.5 billion worth of budget cuts, *see* 2021 Veto List, *available at* <https://www.flgov.com/wp-content/uploads/2021/06/2021-Veto-List-Final.pdf>, have no constitutional relevance, and nothing whatsoever to do with H.B. 1557.

Taken together, Plaintiffs’ allegations amount to (1) legislative statements that neither legally nor logically support their animus claim, (2) rejected amendments that are irrelevant because they were either redundant or would have changed the substantive scope of the bill, and (3) other governmental acts relating to LGBTQ individuals that neither evince discriminatory intent nor, in any event, have anything to do with H.B. 1557. Those allegations are plainly insufficient to state an equal-protection claim given (1) the legislative presumption of good faith, (2) a recent history of Florida schools cutting parents out of decision-making regarding their children, (3) the bill’s stated purpose of safeguarding parental rights, (4) statutory text that restricts only “classroom instruction” and does so neutrally as to sexual orientation and gender identity, (5) language that expressly *allows* classroom instruction on those topics after the third grade, (6) a remedial scheme that, consistent with the bill’s stated objective, is limited to parents, and (7) a legislative history full of statements consistent with that objective.

There is nothing to Plaintiffs’ charges of discriminatory purpose, and the claim should be dismissed.

C. Count VI: Title IX

Plaintiffs also claim that H.B. 1557 violates Title IX of the Education Amendments of 1972 (ECF 47 ¶¶ 308–12), which provides that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits

of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

Title IX has no application here. As explained above, the challenged provision of H.B. 1557 regulates only “classroom instruction”—*i.e.*, curricular materials. Under longstanding regulatory authority, however, Title IX does not “require[] or prohibit[] or abridge[] in any way the use of particular textbooks or curricular materials.” 34 C.F.R. § 106.42. To conclude otherwise would lead to absurd results, as “permitting lawsuits against school districts on the basis of the [allegedly discriminatory] content of [curricula] to proceed past the complaint stage could have a significant chilling effect on a school district’s willingness to assign books with themes, characters, snippets of dialogue, or words that might offend the sensibilities of any number of persons or groups.” *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1030 (9th Cir. 1998). Title IX thus does not speak to state laws like H.B. 1557.

That interpretation is consistent with how courts have interpreted Title IX’s sister statute—Title VI. For example, in *Grimes ex rel. Grimes v. Sobol*, the plaintiff sued New York school officials alleging that “the curriculum of the New York City public schools injure[d] African Americans because it [wa]s systematically biased against them.” 832 F. Supp. 704, 706 (S.D.N.Y. 1993). Given the parallels between Title VI and Title IX, the court requested briefing on Title IX’s implementing

regulations. *Id.* at 711. It then dismissed the complaint, concluding that Title VI “do[es] not encompass the regulation of curricular content.” *Id.* at 713. Likewise, in *Shorter v. St. Cloud State University*, the plaintiff alleged that “he suffered a hostile educational environment created by” his school’s “Euro-centric curriculum.” No. 00-cv-1314, 2001 WL 912367, *10 (D. Minn. Aug. 14, 2001). Drawing on analogy to Title IX, the court explained that “a Title IX claim stemming from the school’s choice of curriculum materials is not actionable.” *Id.* at *10. And then applying that rule to Title VI, the court dismissed the claim. *Id.* at *11; *see also Monteiro*, 158 F.3d at 1032 (dismissing Title VI claim premised on the assignment of *Huckleberry Finn*).

Background principles of statutory interpretation confirm that Title IX does not supersede state curricular decisions. For one thing, states have historically enjoyed an “undoubted right to prescribe the curriculum for [their] public schools,” *Epperson v. Arkansas*, 393 U.S. 97, 107 (1968). “Congress normally preserves ‘the constitutional balance between the National Government and the States,’” and must speak clearly if it wishes to upset the balance. *Bond v. United States*, 572 U.S. 844, 862 (2014). Moreover, “if Congress intends to impose a condition on the grant of federal moneys,” as it did in Title IX, “it must do so unambiguously.” *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). At a minimum, Congress

must speak clearly enough that a funding recipient can “voluntarily and knowingly accept[]” Congress’ “term[s].” *Barnes v. Gorman*, 536 U.S. 181, 186 (2002).

Because Title IX does not regulate state curricular decisions, Plaintiffs lack standing to assert this claim, which in any event fails on the merits.

D. Counts I, IV, and V: First Amendment (Freedom of Expression), First Amendment (Overbreadth), and Due Process (Vagueness)

1. In Count IV, the Student Plaintiffs claim that H.B. 1557 “restricts [their] ability to discuss topics related to sexual orientation and gender identity in class and related settings, and even restricts their ability to self-identify.” ECF 47 ¶ 296. But as discussed more fully above, the statute does not restrict student speech, only “classroom instruction.” *See supra* pp. 16–20. The Student Plaintiffs thus fail to allege an injury-in-fact as to this claim and therefore lack standing and, for the same reason, the claim fails on the merits.

To the extent the concern is that schools will misconstrue the legislation and punish students as a result, that “boils down to an assertion that [the State] could, but need not, apply its law in an unconstitutional way. This assertion is too speculative to support standing.” *Moore*, 853 F.3d at 253. Indeed, the Supreme Court has held that restrictions on student speech during “activities [that] may fairly be characterized as part of the school curriculum” pass muster so long as they “are reasonably related to legitimate pedagogical concerns.” *Hazelwood*, 484 U.S. at 271,

273. It is therefore especially rank speculation to assume that schools’ response to H.B. 1557 will violate that lenient standard. Even then, the alleged injury would not be caused by or traceable to the State Defendants.

2. Counts I and V—Plaintiffs’ overbreadth and vagueness claims—add nothing of substance to their free speech claim. They allege that H.B. 1557’s purported vagueness unconstitutionally chills their behavior and speech. *See* ECF 47 ¶¶ 268, 293–299. They likewise allege that the bill’s “overbreadth has a chilling effect on the behavior and speech of students.” *Id.* ¶ 303.

A “law may be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’” *United States v. Stevens*, 559 U.S. 460, 473 (2010). But because the legislation does not restrict student speech, it certainly is not unconstitutional in “a substantial number” of applications. In other words, because the provision “does not regulate [student] speech, it does not violate the First Amendment rights of persons not before the court” and “Plaintiffs’ ‘overbreadth’ argument is nothing more than a restatement of the First Amendment argument they make on their own behalf.” *Walker*, 450 F.3d at 1105.

As for Plaintiffs’ vagueness claim, compared to criminal statutes, “the consequences of imprecision are qualitatively less severe,” so “a civil statute is unconstitutionally vague only if it is so indefinite as ‘really to be no rule or standard

at all.’” *Leib v. Hillsborough Cnty. Pub. Transp. Comm’n*, 558 F.3d 1301, 1310 (11th Cir. 2009) (quoting *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498–99 (1982)); see *Estrada*, 969 F.3d at 1265 (a statute is void-for-vagueness only if it is truly “standardless”). H.B. 1557’s meaning is readily apparent. See *supra* pp. 16–21.

Indeed, H.B. 1557 provides substantially more guidance to teachers, students, and parents than other civil statutes upheld against vagueness challenges. For example, in *California Teachers Ass’n v. State Board of Education*, the Ninth Circuit rejected a vagueness challenge to a California law that required “the language of instruction used by the teaching personnel [to be] overwhelmingly the English language.” 271 F.3d 1141, 1145, 1152–53 (9th Cir. 2001). Likewise, in *Fowler v. Board of Education of Lincoln County*, the Sixth Circuit held that a school rule that proscribed “conduct unbecoming a teacher” was not unconstitutionally vague because it gives “adequate notice” to teachers. 819 F.2d 657, 664–66 (6th Cir. 1987). And in *Arnett v. Kennedy*, the Supreme Court held that the phrase “for such cause as will promote the efficiency of the service” gave federal employees constitutionally sufficient notice of possible grounds of termination. 416 U.S. 134, 158–64 (1974) (plurality op.). Unlike those laws, H.B. 1557 provides abundant notice of its scope in “terms of common understanding.” *California Teachers Ass’n*, 271 F.3d at 1152–53.

Like every statute, the bill will be amenable of various interpretative questions, but that is no constitutional defect. *See Sabetti v. Dipaolo*, 16 F.3d 16, 18 (1st Cir. 1994) (“If run-of-the-mill statutory ambiguities *were* enough to violate the Constitution, no court could ever clarify statutes through judicial interpretation.”). Instead, Plaintiffs must prove that H.B. 1557 is truly standardless. They cannot make that showing.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Complaint on sovereign-immunity grounds and for lack of standing. If the Court reaches the merits, it should dismiss the Complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Consistent with Local Rule 7.1(F) and the order of this Court, this motion contains 12,731 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2022, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties.

/s/ Daniel William Bell
Chief Deputy Solicitor General

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

No. 4:22-cv-134-AW-MJF

RON DESANTIS, in his official capacity
as Governor of Florida, et al.,

Defendants.

**UNOPPOSED MOTION FOR EXPANSION OF WORD LIMIT
APPLICABLE TO THE STATE DEFENDANTS' MOTION TO DISMISS**

As set forth below, the State Defendants respectfully ask the Court to expand the word limit applicable to their motion to dismiss.

1. Under Local Rule 7.1(f), motions are limited to 8,000 words. The State Defendants ask the Court to expand that limit to 13,000 words.

2. The operative complaint comprises 114 pages of allegations and brings six substantive counts on behalf of 18 Plaintiffs against 18 Defendants. Plaintiffs are students and teachers at various grade levels, parents, and organizations with varied membership, each alleging injuries that give rise to unique justiciability issues.

3. The State Defendants are Governor Ron DeSantis, the Florida State Board of Education, each member of the State Board of Education (Thomas R. Grady, Ben Gibson, Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, Joe York), the

Florida Department of Education, and Florida Commissioner of Education Manny Diaz.¹ Their motion to dismiss is a consolidated response to the amended complaint by eleven defendants and sets forth multiple independent reasons why each claim against them should be dismissed.

4. The State Defendants do not oppose a similar expansion of the word count applicable to Plaintiffs' opposition.

5. Undersigned counsel has conferred with counsel for Plaintiffs and is authorized to represent that Plaintiffs do not oppose this motion.

¹ The Amended Complaint names as a defendant Jacob Oliva, who was the interim Commissioner of Education when the complaint was filed. Commissioner Richard Corcoran resigned on May 1, and the State Board of Education appointed Senator Manny Diaz Jr. to serve as his successor beginning June 1. On June 1, Commissioner Diaz automatically substituted for Mr. Oliva as a defendant in this litigation by operation of law.

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

Consistent with Local Rule 7.1(B), undersigned counsel conferred with Plaintiffs in good faith about the relief requested in this motion and is authorized to represent that Plaintiffs do not oppose this motion.

CERTIFICATE OF WORD COUNT

Consistent with Local Rule 7.1(F), this motion contains 278 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2022, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties.

/s/ Daniel William Bell
Chief Deputy Solicitor General

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

EQUALITY FLORIDA, et al.,

Plaintiffs,

vs.

CASE NO.: 4:22-CV-00134-AW-MJF

RONALD D. DESANTIS, in his
Official capacity as Governor of
Florida, et al.,

Defendants.

_____/

DEFENDANT, SARASOTA COUNTY SCHOOL BOARD'S NOTICE OF
JOINDER IN DEFENDANTS' MOTIONS TO DISMISS

Defendant, School Board of Sarasota County, by and through its undersigned counsel, hereby joins in and adopts the arguments set forth in the Motions to Dismiss filed by Defendants, Pasco County School Board (Dkt. 60), Orange County School Board (Dkt. 63), the School Board of Broward County (Dkt. 62), the St. Johns County School Board (Dkt. 66), and the School Board of Manatee County (Dkt. 67) and hereby incorporates the same into its own Motion to Dismiss Plaintiffs' First Amended Complaint and Memorandum of Law in Support (Dkt. 65).

Dated: June 28, 2022

Respectfully submitted,

/s/ Daniel J. DeLeo

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically using the CM/ECF e-filing portal, which will serve a copy on counsel of record.

Dated: June 28, 2022

Respectfully submitted,

/s/ Daniel J. DeLeo

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

Case No. 4:22-cv-134-AW-MJF

RONALD DESANTIS, et al.,

Defendants.

_____ /

ORDER REGARDING MOTIONS TO DISMISS

The State Defendants' unopposed motion to exceed the word limit (ECF No. 69) is GRANTED. Although the court does not routinely allow expanded briefs, the request is justified here. The motion to dismiss (ECF No. 68) is therefore accepted as filed.

As reflected in the parties' joint report (ECF No. 54) and approved in the Scheduling Order (ECF No. 61), Plaintiffs' deadline to respond to the motions to dismiss is July 27, and Defendants may reply by August 10.

Plaintiffs should file one consolidated response to all seven pending motions to dismiss, not seven separate responses. The consolidated response should not exceed 15,000 words. If Plaintiffs contend this is unworkable, they may promptly move for relief.

SO ORDERED on June 28, 2022.

s/ Allen Winsor

United States District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

No. 4:22-cv-134-AW-MJF

**RON DESANTIS, in his official capacity
as Governor of Florida, et al.,**

Defendants.

**DEFENDANTS’ MOTION TO STAY DISCOVERY PENDING
RESOLUTION OF THEIR MOTIONS TO DISMISS**

In an earlier filing, Defendants previewed that there likely would be “compelling reasons for the Court to stay discovery pending resolution of their motion[s] to dismiss” but noted that a motion to stay would “be premature until the amended complaint and motion[s] to dismiss are filed.” ECF 37 at 3. Per this Court’s order, Plaintiffs filed their amended complaint on May 25, 2022, which added more than 30 pages of allegations to their original pleading. On June 27, Defendants filed six motions to dismiss, five by individual school board defendants and one by the State Defendants. Plaintiffs have served interrogatories and requests for production of documents, responses to which are due July 18.

For the reasons discussed below, Defendants respectfully ask the Court to stay discovery until their motions to dismiss are resolved.

ARGUMENT

Although district courts enjoy significant discretion over docket management, the Eleventh Circuit has repeatedly held that “[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997); *accord Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1308 (11th Cir. 2020); *Roman v. Tyco Simplex Grinnell*, 732 F. App’x 813, 815 (11th Cir. 2018); *Stepanovich v. City of Naples*, 728 F. App’x 891, 903 (11th Cir. 2018); *Roberts v. FNB S. of Alma*, 716 F. App’x 854, 857 (11th Cir. 2017); *Rivas v. The Bank of N.Y. Mellon*, 676 F. App’x 926, 932 (11th Cir. 2017); *Redford v. Gwinnett Cnty. Jud. Cir.*, 350 F. App’x 341, 346 (11th Cir. 2009); *Dragash v. Fed. Nat’l Mortg. Ass’n*, 700 F. App’x 939, 946 (11th Cir. 2017); *Moore v. Potter*, 141 F. App’x 803, 807 (11th Cir. 2005).

Resolving dispositive motions before discovery avoids “unnecessary costs to the litigants and to the court system.” *Chudasama*, 123 F.3d at 1368; *see Lawrence v. Governor of Ga.*, 721 F. App’x 862, 864 (11th Cir. 2018) (“[W]arn[ing] of the dangers of allowing a case to proceed through the pretrial processes with a potentially invalid claim.”). This case is no exception. Indeed, resolving the pending motions pre-discovery is especially important here for three reasons.

1. Defendants raise serious questions about Plaintiffs’ standing and, with it, the Court’s subject-matter jurisdiction. *See* ECF 62 at 4–6; ECF 63 at 8–11; ECF 65 at 13–23; ECF 66 at 12–16; ECF 67 at 9–22; ECF 68 at 24–31. Subject-matter jurisdiction is fundamental to the Court’s “power to act.” *Escareno v. Carl Nolte Sohne GmbH*, 77 F.3d 407, 412 (11th Cir. 1996). That is, “[w]ithout jurisdiction the court cannot proceed at all in any cause,” and “the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)).

That is no less true of discovery, as “[t]he subpoena power of a court cannot be more extensive than its jurisdiction.” *U.S. Cath. Conf. v. Abortion Rts. Mobilization, Inc.*, 487 U.S. 72, 76 (1988). Defendants therefore should not be required to submit to discovery while serious questions about the Court’s power to act are resolved. *See Seaway Two Corp. v. Deutsche Lufthansa Aktiengesellschaft*, 06-20993-CIV, 2006 WL 8433652, at *1 (S.D. Fla. Nov. 17, 2006) (“[B]ecause the Motion to Dismiss asserts that the Court [lacks] subject matter jurisdiction . . . it is possible that the Court lacks the authority to mandate that the parties engage in discovery.”). For that reason, when “serious doubts regarding subject matter jurisdiction” are raised, courts have stayed discovery. *Duo-Regen Techs., LLC v. 4463251 Can., Inc.*, 8:13-CV-2108-T-27TBM, 2014 WL 12618711, at *1 (M.D. Fla.

Feb. 14, 2014); *accord Latele Prods., Inc. v. Azteca Int'l Corp.*, 16-CV-25347, 2018 WL 11350654, at *1 (S.D. Fla. Dec. 18, 2018). This Court should do the same here.

2. Eleven of eighteen defendants (the State Defendants) have moved to dismiss on sovereign-immunity grounds. *See* ECF 68 at 21–24. “[S]overeign immunity presents a special concern that a party raising the defense should not be subjected to the burdens of litigation before the defense has been decided.” *Cook v. Taylor*, No. 2:18-CV-977-WKW, 2019 WL 1233853, at *1 (M.D. Ala. Mar. 15, 2019) (citing *Bouchard Transp. Co. v. Fla. Dep’t of Env’t Prot.*, 91 F.3d 1445, 1448 (11th Cir. 1996)). “Indeed, the Eleventh Circuit has explicitly held that the district court must resolve a claim of immunity before subjecting a party asserting it to discovery or Rule 26 obligations.” *Id.* (citing *Howe v. City of Enterprise*, 861 F.3d 1300, 1302–03 (11th Cir. 2017)). That makes sense because sovereign immunity is “an immunity from suit rather than a mere defense to liability” that must be resolved “at the earliest possible stage in litigation,” and the immunity is violated whenever a defendant entitled to it is required to participate in litigation, including discovery. *Howe*, 861 F.3d at 1302 (quotations omitted); *cf. P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 143 (1993) (holding that an order denying a

defendant Eleventh Amendment immunity is immediately appealable because the issue is “too important to be denied review”).¹

3. Beyond that, each of Plaintiffs’ claims is legally insufficient for several additional independent reasons. For example, Plaintiffs’ equal-protection claim fails not only because they fail to plausibly allege discriminatory purpose, but for the more basic reason that “the gravamen of an equal protection claim is differential governmental treatment, not differential governmental messaging,” *Moore v. Bryant*, 853 F.3d 245, 250 (5th Cir. 2017), and H.B. 1557 does not subject Plaintiffs (or anyone else) to differential treatment. Like other curricular standards, it subjects all teachers at a given grade level to the same restriction on “classroom instruction” and thus operates equally on the education of all students at that grade level. And Plaintiffs lack standing under the Equal Protection Clause to challenge mere “exposure to a discriminatory message, without a corresponding denial of equal treatment.” *Id.* at 249–50.

¹ This Court has previously concluded that discovery may proceed where a sovereign immunity defense is “factual,” such as when defendants “submit[] a declaration in support” of their argument “that they have not waived immunity under § 504 by accepting federal funds.” *Yelapi v. Desantis*, No. 4:20-CV-351-AW-MAF, 2021 WL 1921018, at *1 (N.D. Fla. Feb. 25, 2021). Even granting that, however, here the sovereign-immunity defense turns on Defendants’ role (or lack thereof) in the challenged statutory scheme. In that scenario, discovery should await resolution of the immunity issue.

Plaintiffs’ Title IX claim is likewise implausible because H.B. 1557 regulates only “classroom instruction”—*i.e.*, curricular materials—and, under longstanding regulatory authority, Title IX does not “require[] or prohibit[] or abridge[] in any way the use of particular textbooks or curricular materials.” 34 C.F.R. § 106.42; *see, e.g., Grimes ex rel. Grimes v. Sobol*, 832 F. Supp. 704, 706 (S.D.N.Y. 1993) (relying on Title IX regulations to reject a claim under its sister statute, Title VI, that the curriculum of the New York City public schools injured African Americans because it was systematically biased against them).

While Plaintiffs’ other claims fare no better, the implausibility of Plaintiffs’ equal-protection and Title IX claims is especially significant because those motive- and effects-based claims are Plaintiffs’ only arguable path to discovery. Vagueness is, of course, always a question of law. So are Plaintiffs’ First Amendment claims, which are subject, at most, to rational-basis review. The content of public-school curricula is plainly government speech. *See Chiras v. Miller*, 432 F.3d 606, 618 (5th Cir. 2005); *see Kennedy v. Bremerton Sch. Dist.*, 21-418, 2022 WL 2295034, at *2 (U.S. June 27, 2022) (explaining that a high school coach “instructing players” is government speech because it is the “speech the [school d]istrict paid him to produce”). But even student speech that is part of school-sponsored activity may be restricted in a manner that is “reasonably related to legitimate pedagogical concerns.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988). That test

asks not what the State actually concluded, but what it “could reasonably have concluded,” *id.* at 275, a question of law. Plaintiffs thus have no need, for example, for all documents “concerning H.B. 1557 and the advancement of any pedagogical or governmental interest, including H.B. 1557’s role in advancing any pedagogical or government interest” or all documents “concerning respects in which H.B. 1557 may hinder, undermine, frustrate, or defeat any pedagogical or governmental interest.” *See* Ex. A, First Request for Production to DeSantis at 7.

A stay of discovery is therefore warranted because the complaint faces a serious, case-dispositive challenge. *See, e.g., Chevaldina v. Katz*, 17-22225-CIV, 2017 WL 6372620, at *3 (S.D. Fla. Aug. 28, 2017) (good cause for a stay when, in light of motion to dismiss, “Plaintiff’s entire cause of action before this Court may be dismissed”); *Prohias v. Asurion Corp.*, 05-22259-CIV, 2006 WL 8433152, at *1 (S.D. Fla. Jan. 10, 2006) (good cause when, after taking “preliminary peek” to determine that the defendant’s motion was “truly case dispositive,” the court determined that the motion could result in full dismissal). But even assuming some part of the complaint will survive, it is exceedingly unlikely that Plaintiffs will ultimately need discovery for any or all of their claims, which independently justifies a stay. *See, e.g., Khan v. BankUnited, Inc.*, 8:15-CV-2632-T-23TGW, 2016 WL 4718156, at *1 (M.D. Fla. May 11, 2016) (granting stay because motion to dismiss “will potentially narrow the scope of discovery in a case of this complexity and

size”). For these reasons, the dozens of interrogatories and requests for production on Defendants (with more sure to come) are unduly burdensome and all the more reason to grant the stay.²

4. Plaintiffs will no doubt oppose a stay because “the Court has set a trial date of February 13, 2023” and, for that reason, they decided to forego “seeking a preliminary injunction.” ECF 47 at 112 n.80. Plaintiffs are, of course, free to file a preliminary-injunction motion at any time, and they have known since at least the beginning of May that Defendants intended to file motions to dismiss and then seek a discovery stay pending resolution of those motions.

In any event, courts have rejected similar arguments because the schedule “can be amended.” *Duo-Regen Techs., LLC*, 2014 WL 12618711, at *2. That is especially true here because Plaintiffs’ litigation conduct belies any claim that the trial date should be set in stone. Plaintiffs filed suit on March 31, 2022. ECF 1. At that time, they said that the “harmful effects of H.B. 1557,” which would not become effective for months, were “already manifest,” ECF 1 ¶ 16, and they planned to seek preliminary injunctive relief. ECF 1 ¶ 251. They apparently reconsidered and have, since then, litigated at a leisurely pace beginning with a two-month lull so that they could amend their complaint, ECF 32 at 1, culminating in a decision not to seek

² See Ex. A; see also, e.g., Ex. B, First Set of Interrogatories to All Defendants (propounding 14 interrogatories); Ex. C., First Request for Production to Diaz (asking for 38 categories of documents).

preliminary relief. ECF 47 at 112 n.80. Having reversed course on the need for speed once, Plaintiffs should not be heard to do so again.

Respectfully submitted,

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/s/ Daniel William Bell
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CERTIFICATE OF CONFERRAL

Consistent with Local Rule 7.1(B), undersigned counsel conferred in good faith with counsel for Plaintiffs, who oppose the relief requested in this motion.

CERTIFICATE OF WORD COUNT

Consistent with Local Rule 7.1(F), this motion contains 1,897 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2022, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which will provide service to all parties.

/s/ Daniel William Bell
Chief Deputy Solicitor General

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

Case No. 4:22-cv-134-AW-MJF

RONALD DESANTIS, et al.,

Defendants.

_____/

ORDER DENYING MOTION TO INTERVENE

I earlier denied Scott Huminski's motion to intervene. ECF No. 46. Huminski now moves for reconsideration, requesting for various forms of relief. ECF No. 53. Because Huminski shows no entitlement to relief, his motion (ECF No. 53) is DENIED.

SO ORDERED on July 12, 2022.

s/ Allen Winsor

United States District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

EQUALITY FLORIDA; FAMILY
EQUALITY; M.A., by and through
his parent AMBER ARMSTRONG;
S.S., by and through her parents,
IVONNE SCHULMAN and CARL
SCHULMAN; ZANDER MORICZ;
LINDSAY MCCLELLAND, in her
personal capacity and as next friend
and parent of JANE DOE; RABBI
AMY MORRISON and CECILE
HOURLY; DAN and BRENT
VANTICE; LOURDES CASARES
and KIMBERLY FEINBERG;
LINDSEY BINGHAM SHOOK;
ANH VOLMER; SCOTT BERG;
and MYNDEE WASHINGTON,

Plaintiffs,

v.

RONALD D. DESANTIS, in his
official capacity as Governor of
Florida; FLORIDA STATE BOARD
OF EDUCATION; THOMAS R.
GRADY, BEN GIBSON,
MONESIA BROWN, ESTHER
BYRD, GRAZIE P. CHRISTIE,
RYAN PETTY, and JOE YORK, in
their official capacities as members
of the Board of Education; JACOB
OLIVA, in his official capacity as
Commissioner of Education of
Florida; FLORIDA DEPARTMENT
OF EDUCATION; BROWARD
SCHOOL BOARD; SCHOOL
BOARD OF MANATEE COUNTY;

Civil Action No. 4:22-cv-0134-
AW-MJF

SCHOOL BOARD OF SARASOTA
COUNTY; SCHOOL BOARD OF
MIAMI-DADE COUNTY;
ORANGE COUNTY SCHOOL
BOARD; ST. JOHNS COUNTY
SCHOOL BOARD; and PASCO
COUNTY SCHOOL BOARD,

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY DISCOVERY**

On July 1, 2022, the very day that H.B. 1557 went into effect and its harmful effects ratcheted up in schools and communities across Florida, Defendants moved to stay discovery pending resolution of their motions to dismiss. But contrary to their argument, there is no general rule that discovery should be stayed while a motion to dismiss is resolved. In fact, the opposite is true: a stay of discovery is disfavored—the exception, rather than the rule. The far more common practice is for the parties to litigation to conduct discovery while motions are pending since that avoids inefficiency and unduly prolonged litigation. Accordingly, a motion to stay discovery may be granted only upon a showing of prejudice, undue burden, and necessity/reasonableness of a stay.

Defendants here come nowhere close to meeting that high bar. They make little attempt to show that they would suffer any prejudice or undue burden if a stay were denied, or that a stay is necessary and reasonable under the circumstances. In

reality, a stay of discovery would substantially prejudice Plaintiffs and unduly delay the litigation. Even before H.B. 1557 took effect on July 1, it was causing widespread injury throughout the state of Florida, including to Plaintiffs, and in recent weeks, the consequences, even before Florida children return to school next month, have been widely reported. *See, e.g., Valerie Strauss, Florida law limiting LGBTQ discussions takes effect — and rocks schools*, Wash. Post (July 1, 2022, 4:14 PM), <https://www.washingtonpost.com/education/2022/07/01/dont-say-gay-florida-law/>; Nick Papantonis, *Teachers voice concerns after Orange County previews ‘Don’t Say Gay’ impact to classrooms*, WFTV.com (June 27, 2022, 11:31 PM), <https://www.wftv.com/news/local/teachers-voice-concerns-after-orange-county-previews-dont-say-gay-impact-classrooms/R6VGDIOC2RFURLBUVT6TVWPDGA>. As the law now takes effect and the harms explode, Defendants seek to close the door to discovery. Defendants tellingly offer no reason for why they waited this long—and until the effective date itself—before making a motion that they previewed and that the Court invited them to file months ago. *See* ECF No. 37 at 3–4; ECF No. 44 at 3 ¶ 7.

Under the appropriately fast-moving schedule ordered by the Court, discovery is set to close in this case less than four months from now (or on November 4, 2022), and trial is set for February 2023. *See* ECF No. 61. Issuing a stay now would effectively derail that schedule and prejudice Plaintiffs by putting off discovery and

throwing the trial schedule into serious doubt, when each day that goes by with this unconstitutional law on the books is one day longer that Plaintiffs are being injured.

For the reasons set forth below, Plaintiffs respectfully request that the Court deny Defendants' Motion, direct Defendants to respond to Plaintiffs' pending discovery requests, and allow this case presenting important constitutional issues affecting parents and children throughout the state of Florida to proceed toward an efficient and orderly resolution according to the schedule set by the Court.

ARGUMENT

I. The Applicable Standard

While “[m]atters pertaining to discovery are committed to the sound discretion of the district court,” it is “the usual practice in this District [to] conduct[] discovery while Rule 12(b)(6) motions are pending.” *Yelapi v. Desantis*, No. 4:20-cv-351-AQ-MAF, 2021 U.S. Dist. LEXIS 93652, at *3 (N.D. Fla. Feb. 25, 2021) (Winsor, J.) (citation omitted); *see also Reilly v. Amy’s Kitchen, Inc.*, No. 13-21525-Civ-Cohn/Seltzer, 2013 U.S. Dist. LEXIS 108492, at *2 (S.D. Fla. July 31, 2013) (“[T]here is no general rule that discovery be stayed while a pending motion to dismiss is resolved.”). As a result, a “stay of discovery should be the exception rather than the rule.” *McCrimmon v. Centurion of Fla., LLC*, No. 3:20-cv-36-J-39JRK, 2020 U.S. Dist. LEXIS 199518, at *5 (M.D. Fla. Oct. 27, 2020).

Motions to stay discovery like the one filed by Defendants here “are disfavored by the Court because stays typically delay resolution of a case and extend the life of a case beyond an acceptable time period.” *McMillan v. Dep’t of Corr.*, No. 5:13-cv-292-WS-GRJ, 2013 U.S. Dist. LEXIS 191249, at *4 (N.D. Fla. Oct. 21, 2013) (denying a motion to stay discovery pending a motion to dismiss). This is true because “when discovery is delayed or prolonged it can create case management problems which impede the Court’s responsibility to expedite discovery and cause unnecessary litigation expenses and problems.” *Feldman v. Flood*, 176 F.R.D. 651, 652 (M.D. Fla. 1997).

Motions to stay discovery are therefore typically “denied except where a specific showing of prejudice or burdensomeness is made.” *Wiand v. ATC Brokers Ltd.*, No. 8:21-cv-01317-MSS-AAS, 2022 U.S. Dist. LEXIS 76675, at *3 (M.D. Fla. Apr. 27, 2022) (citation omitted). While a court in this District may “take a preliminary peek at the merits of the allegedly dispositive motion,” it is only to determine whether “on its face there appears to be an immediate and clear possibility that it will be granted.” *Feldman*, 176 F.R.D. at 652 (citation omitted). Instead, the proper focus of the analysis is on the detrimental effect a stay will have on the progress of the litigation. Thus, in order “to prevail on a request to stay discovery, the moving party has the burden to show not only prejudice and undue burden, but

also [the] necessity and reasonableness of a stay.” *Silva v. Lee Cnty.*, No. 2:21-cv-210-JLB-NPM, 2021 U.S. Dist. LEXIS 163193, at *2 (M.D. Fla. Aug. 27, 2021).

II. Defendants Fail to Meet Their Burden to Stay Discovery

As noted above, in order to prevail on their motion to stay discovery, Defendants have “the burden to show not only prejudice and undue burden, but also necessity and reasonableness of a stay.” *Silva*, 2021 U.S. Dist. LEXIS 163193, at *2. They come nowhere close to meeting that burden here.

Prejudice. Defendants make no real attempt to show that they would be prejudiced by responding to Plaintiffs’ discovery requests (apart from the ordinary and inherent burdens of discovery that apply in every case). Indeed, the prejudice here runs the opposite way, since the urgent harms caused by H.B. 1557 call for prompt adjudication of this dispute. Even before the law took effect on July 1, it was already having dramatic repercussions on Plaintiffs and others throughout Florida, including by chilling Plaintiffs’ speech, increasing their anxiety and distress, and leading to bullying and ostracization. *See* First Amended Complaint (“FAC”) ¶¶ 173–260, ECF No. 47. The school year is set to begin next month, in just a matter of weeks, at which point these injuries will only multiply.

Commensurate with the urgency of this case, the Court has already ordered a fast-moving schedule, with discovery to close on November 4, 2022 and trial set for February 2023. *See* ECF No. 61. As this Court has previously held at a similar stage

in other cases, a discovery stay pending a motion to dismiss is inappropriate under such circumstances, since “the discovery period is not much longer, and Plaintiffs would be prejudiced by a delay.” *See Yelapi*, 2021 U.S. Dist. LEXIS 93652, at *3 & Order Granting Joint Mot. to Amend Schedule, *Yelapi v. Desantis*, No. 4:20-cv-351-AW-MAF (N.D. Fla. Apr. 2, 2021), ECF No. 78 (similar period of approximately four months); see also *Seequip, Inc. v. All Am. Grinding Equip., LLC*, 3:05-cv-259-RS-EMT, 2006 U.S. Dist. LEXIS 104472, at *5 (N.D. Fla. Jan. 4, 2006) (explaining that a stay of discovery would “prejudice Plaintiff and interfere with the pretrial deadlines” when pretrial deadlines “have been set and are fast approaching”). A weeks- or months-long stay of discovery puts the Court’s so-ordered expedited schedule in serious jeopardy and risks needlessly prolonging this case, likely at least doubling the time it will take to get to trial.¹

For these reasons, it is not Defendants who would be prejudiced from offering timely responses to straightforward questions about the implementation and effects of H.B. 1557. Even Defendants do not meaningfully contend otherwise. Rather, it is Plaintiffs (and many other Floridians) who face prejudice from a disruption to the

¹ While Defendants criticize Plaintiffs for litigating “at a leisurely pace” due to their decision not to seek preliminary injunctive relief, Mot. 8, that assertion is unfounded. As Plaintiffs explained in their Amended Complaint, they decided not to file a motion for a preliminary injunction specifically because “trial is now scheduled to take place in relatively short order.” FAC ¶ 314 n.80. And Plaintiffs have otherwise litigated with alacrity, serving thorough initial disclosures and targeted—and appropriately varied—discovery requests on *all* Defendants.

litigation schedule that perpetuates the harms of H.B. 1557 and forces this Court to upset the schedule it already adopted to govern these proceedings.

Undue Burden. Defendants’ sole argument as to burden is that Plaintiffs served “dozens of interrogatories and requests for production.” Mot. 8. Although Plaintiffs carefully tailored their discovery requests and believe those requests to be appropriate in scope, Defendants’ disagreement is no reason to stay discovery. *See Jolly v. Hoegh Autoliners Shipping AS*, No. 3:20-cv-1150-MMH-PDB, 2021 U.S. Dist. LEXIS 65616, at *4–5 (M.D. Fla. Apr. 5, 2021). Instead, Defendants, like any other party, can raise at a meet-and-confer their objections to any specific discovery requests they consider non-compliant with the Federal Rules of Civil Procedure and move for a protective order if the issue cannot be resolved. This case does not involve a poorly counseled or under-resourced party. Defendants are represented by multiple sophisticated counsel who routinely respond to federal lawsuits seeking the types of information properly being sought by Plaintiffs here. Moreover, parents, teachers, and school districts throughout the State are already asking many of the very same questions that Plaintiffs have posed in their discovery requests. *See, e.g., Papantonis, Teachers voice concerns after Orange County previews ‘Don’t Say Gay’ impact to classrooms*, WFTV.com, *supra*. The notion that responding to discovery requests would pose some unusual or undue burden on Defendants cannot be credited.

Necessity and Reasonableness of a Stay. Again, Defendants make little effort to establish the “necessity and reasonableness of a stay” under these circumstances. *Silva*, 2021 U.S. Dist. LEXIS 163193, at *2. Nor could they. For the same reasons that a stay would unfairly prejudice Plaintiffs (as described above), a stay would be manifestly *unreasonable* under the circumstances.

* * *

In sum, Defendants fail to meet their burden as to each of the elements that courts in this Circuit have held are necessary to warrant a stay of discovery. *See, e.g., Wiand*, 2022 U.S. Dist. LEXIS 76675, at *3; *Silva*, 2021 U.S. Dist. LEXIS 163193, at *2.

III. Defendants’ Reliance on Inapplicable Legal Principles Does Not Salvage Their Motion

Rather than attempt to meet the applicable standard for a stay, Defendants rely instead on sweeping assertions of law that lack merit. Specifically, Defendants argue that: (1) “facial challenges to the legal sufficiency of a claim or defense . . . should be resolved before discovery begins,” Mot. 2 (quoting *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997)); and (2) the State Defendants’ claims of sovereign immunity must be resolved before discovery can commence in this litigation, Mot. 4 (citing *Cook v. Taylor*, No. 2:18-cv-977-WKW, 2019 U.S. Dist. LEXIS 42406, at *3 (M.D. Ala. Mar. 15, 2019)). As explained below, both of these arguments fail as well.

“Facial Challenges.” Relying primarily on the case of *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997), Defendants appear to contend that simply filing a motion to dismiss a complaint that contains a “facial challenge” to a law triggers an automatic stay of discovery. Mot. 2. This is incorrect—and cannot be squared with applicable authority and basic principles that disfavor blanket stays of discovery.

“Since the Eleventh Circuit handed down *Chudasama*, it has been analyzed on numerous occasions, and courts have consistently *rejected* any *per se* requirement to stay discovery pending resolution of a dispositive motion.” *Bocciolone v. Solowsky*, 2008 U.S. Dist. LEXIS 59170, at *3–4 (S.D. Fla. July 24, 2008) (emphasis added) (collecting cases). “Various courts have recognized that *Chudasama* does *not* stand for the broad proposition that a court must stay discovery when there is a pending motion to dismiss.” *Romacorp, Inc. v. Prescient, Inc.*, No. 10-22872-CIV, 2011 U.S. Dist. LEXIS 62839, at *6 (S.D. Fla. June 8, 2011) (emphasis added); *see Select Exp. Corp. v. Richeson*, No. 10-80526-civ-DIM, 2010 U.S. Dist. LEXIS 157312, at *3 (S.D. Fla. Dec. 1, 2010).

These courts have distinguished *Chudasama*—and reconciled *Chudasama* with the general rule disfavoring discovery stays—by placing it in the context of its particular facts, where the district court “‘effectively abdicate[d] its responsibility to manage [the] case’ by never ruling on a motion to dismiss that was ripe for over

eighteen months and refusing to rule on discovery disputes the parties routinely brought before the court.” *McCrimmon v. Centurion of Fla., LLC*, 3:20-cv-36-J-39JRK, 2020 U.S. Dist. LEXIS 199518, at *3 (M.D. Fla. Oct. 27, 2020) (quoting *Chudasama*, 123 F.3d at 1356, 1360–62); *see Bocciolone*, 2008 U.S. Dist. LEXIS 59170, at *5 (describing the facts in *Chudasama* as “bizarre”). That, of course, is the opposite of what happened here, given that the Court has both set an appropriately fast schedule and promptly adjudicated every dispute, issue, or proposal brought before it. For similar reasons, this Court has previously declined to accept the exact same interpretation of *Chudasama* that Defendants press here. *Compare* Defs.’ Mot. for Stay of Disc. and Protective Order, *Yelapi v. Desantis*, No. 4:20-cv-351-AW-MAF (N.D. Fla. Feb. 5, 2021), ECF No. 61, *with Yelapi*, 2021 U.S. Dist. LEXIS 93652, at *3–4 (Winsor, J.).

While Defendants also cite several Eleventh Circuit decisions citing *Chudasama*, these cases are mostly unpublished, nonbinding decisions holding that the district court did not abuse its discretion in staying discovery on the particular circumstances of those cases. *See* Mot. 2; *see, e.g., Stepanovich v. City of Naples*, 728 F. App’x 891, 903 (11th Cir. 2018); *Roberts v. FNB S. of Alma*, 716 F. App’x 854, 857 (11th Cir. 2017). Such cases not only do not resemble the facts of this case, which involves serious constitutional claims under the First, Fifth, and Fourteenth Amendments, but also certainly do not alter “the usual practice in this District [to]

conduct[] discovery while Rule (12)(b)(6) motions are pending.” *Yelapi*, 2021 U.S. Dist. LEXIS 93652, at *3 (Winsor, J.). That leaves just *Isaiah v. JPMorgan Chase Bank, N.A.*, 960 F.3d 1296 (11th Cir. 2020), which held only that a district court did not abuse its discretion in staying discovery pending a motion to dismiss where it (quite unusually) had “the benefit of a previous court’s review of Isaiah’s nearly identical claims against a different bank.” *Id.* at 1309.

Because this case does not remotely resemble *Chudasama*—and because Defendants’ mistaken interpretation of that case is at odds with practice and precedent in this District—there is no merit to their claim that a categorical stay of discovery is warranted here.

Sovereign Immunity. Defendants also argue that discovery should be stayed because the State Defendants “have moved to dismiss on sovereign-immunity grounds.” *See* Mot. 4–5. They are wrong about this for two separate reasons.

First, Defendants’ argument has no application to Plaintiffs’ Title IX claim, FAC ¶¶ 308–312, since sovereign immunity has expressly been waived for such claims. *See* 42 U.S.C. § 2000d-7 (“A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of . . . title IX of the Education Amendments of 1972”); *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1301 (11th Cir. 2007).

As such, considerations of sovereign immunity (even if otherwise applicable) offer no basis to stay discovery on Plaintiffs’ Title IX claim. And because that claim alleges discrimination and disparate treatment, FAC ¶ 311, the discovery sought under that claim will not be meaningfully different from the discovery sought under Plaintiffs’ equal-protection claims (particularly in light of the fact that Defendants’ arguments concerning the Title IX claim rely on similar assertions about how H.B. 1557 works).

In these circumstances, the case law holds that the inapplicability of sovereign immunity to one of Plaintiffs’ claims defeats arguments that discovery should be stayed as to substantially related claims. *See Nat’l Ass’n of the Deaf v. Florida*, 980 F.3d 763, 776 (11th Cir. 2020) (finding that, where “the Legislative Defendants are not entitled to sovereign immunity against Plaintiffs’ ADA claims” and would be required to provide discovery on those claims, and given the overlap between the plaintiffs’ ADA claims and Rehabilitation Act claims, ordering the defendants to respond to plaintiffs’ Rehabilitation Act claims would not “encroach on the Legislative Defendants’ immunity”). Given the close relationship among Plaintiffs’ claims—and given the obvious benefit of avoiding piecemeal discovery—the right approach is to allow discovery to proceed, not to abruptly halt it.

Second, and more broadly, this Court has already rejected the argument that claims of sovereign immunity warrant automatic stays of discovery, particularly

where the assertion of sovereign immunity turns on factual issues. The defendants in *Yelapi* contended that their assertion of sovereign immunity concerning the plaintiff's Rehabilitation Act claim required a stay of discovery pending their motion to dismiss. 2021 U.S. Dist. LEXIS 93652, at *3 (Winsor, J.). This Court disagreed and denied the stay, highlighting that the immunity defense was “factual” in nature. *Id.*

Here, not only have Defendants raised factual issues bearing on the immunity claims in their respective motions to dismiss, but they aggressively dispute what role (if any) each of them plays or will play in interpreting and enforcing the law—factual disputes that bear directly on the question whether they are entitled to sovereign immunity.

Plaintiffs contend that each of the State-level agency Defendants and their members are expressly tasked with implementation and enforcement of the new law, as are the school districts upon which it imposes liability and duties to ensure compliance. *See, e.g.*, FAC ¶¶ 83–93. The Governor, for his part, has a constitutional duty to ensure that the laws are followed, FAC ¶ 82—and, as Orange County School Board argues, he has an intimate role in enforcing these sorts of initiatives, *see* Def. Orange Cnty. Sch. Bd. Mot. to Dismiss 6–7, ECF No. 63 (“OCSB MTD”). But as a review of the various Defendants’ motions to dismiss makes clear, many of them disclaim responsibility for enforcing H.B. 1557, and point at each other, in what

looks like a circular firing squad. *Compare, e.g.*, State Defs.’ Mot. to Dismiss 22, ECF No. 68 (“The Governor has no specific authority under H.B. 1557, which is enforced by the State Board of Education and private citizens.”), *with* Def. Sch. Bd. of Broward Cnty. Mot. to Dismiss 9, ECF No. 62 (“[T]he establishment of the complained of prohibition on classroom instruction emanates from Florida legislature [*sic*] and will thereafter be more fully defined by rules and regulations adopted by the Florida Department of Education.”), *and* OCSB MTD 3 (“The operative arguments to invalidate the law are solely against the state actors.”).

Accordingly, just as in *Yelapi*, Defendants have raised fact questions concerning their role with respect to the statutory scheme. These arguments bear directly on the validity of their immunity defenses and thus defeat their argument that a sovereign-immunity defense prohibits any discovery into the implementation of H.B. 1557 at this early stage in the litigation.

IV. A Preliminary Peek at the Merits Provides No Reason to Stay Discovery

While the Court may “take a preliminary peek at the merits of the allegedly dispositive motion,” such a “peek” is only to determine if “on its face there appears to be an immediate and clear possibility that it will be granted.” *Feldman*, 176 F.R.D. at 652. There is no such “immediate and clear possibility” here.

Standing. Defendants breezily assert that they “raise serious questions about Plaintiffs’ standing and, with it, the Court’s subject-matter jurisdiction.” Mot. 3.

Not so. As we will explain at greater length when we file our substantive opposition brief, Plaintiffs have alleged an injury-in-fact as to each of their claims: they have, in the Eleventh Circuit’s words, “alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1304 (11th Cir. 2017).

First, as outlined at length in the Amended Complaint, the law already has chilled Plaintiffs’ First Amendment rights by causing them to withhold from various forms of speech in which they would otherwise have engaged and participated. *See, e.g.*, FAC ¶¶ 173–201. H.B. 1557 thus “cause[s] a reasonable student to fear expressing” speech that may be prohibited under the law. *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1121 (11th Cir. 2022). “That sort of ‘objective chill’ suffices” for purposes of standing. *Id.* at 1122.

Second, Plaintiffs have plausibly alleged that H.B. 1557’s vagueness “exerts a chilling effect” on their speech and actions, *see generally* FAC ¶¶ 173–260, “which is enough for [Plaintiffs] to show an injury-in-fact in the form of self-censorship.” *Harrell v. The Fla. Bar*, 608 F.3d 1241, 1257 (11th Cir. 2010). Finally, Plaintiffs have plausibly alleged standing to challenge H.B. 1557 under the Equal Protection Clause. H.B. 1557’s discriminatory and disparate effects on Plaintiffs, *see* FAC ¶¶ 273–85, as alleged, are a form of “denial of equal treatment” that clearly constitute

an “injury in fact.” *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993).

In addition to alleging injury, Plaintiffs also satisfy the traceability and redressability requirements of Article III because the alleged “injuries are directly traceable to the passage of” H.B. 1557. *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1205 (N.D. Fla. 2020). Plaintiffs, of course, are not required in these circumstances to show that Defendants themselves caused Plaintiffs’ injury. *See id.* (finding standing satisfied where the “Plaintiffs’ injuries are directly traceable to the passage of” the constitutional amendment at issue); *see also Speech First*, 32 F.4th at 1119.

Sovereign Immunity. As noted above, no blanket rule exists that sovereign-immunity defenses must be resolved before discovery may begin in a case like this raising significant free speech, due process, and equal protection issues. *See* Mot. 4. Regardless, the “peek” that the case law suggests, *Feldman*, 176 F.R.D. at 652, at the sovereign-immunity defense shows that it fails. Each of the State Defendants who has moved to dismiss on this ground (Governor DeSantis, the Board of Education and its members, and the Commissioner of Education) certainly has “some connection with the enforcement of” H.B. 1557, *Ex parte Young*, 209 U.S. 123, 157 (1908), consistent with their executive and administrative functions in the State of Florida and Florida’s education system. *See, e.g.,* FAC ¶¶ 82–86. Governor

DeSantis, for example, has a constitutional duty to “take care that the laws be faithfully executed” and is “the chief administrative officer of the state responsible for the planning and budgeting for the state.” Fla. Const., art. IV, § 1(a). The Board of Education has the powers and duties to, among other things, “enforce systemwide education goals and policies except as otherwise provided by law” and “adopt and periodically review and revise the Sunshine State Standards.” Fla. Stat. §§ 1001.02(2)(r), 1001.03(1). And the Commissioner is the Executive Director of the Department of Education, and “is responsible for giving full assistance to the State Board of Education in enforcing compliance with the mission and goals of the Early Learning-20 education system.” Fla. Stat. §§ 20.15(2), 1001.10(1). These Defendants cannot simply duck when faced with this important lawsuit.

Equal Protection (Count II). Again preferring to litigate the merits rather than the applicable stay factors, Defendants argue that Plaintiffs’ equal-protection claim fails because “the gravamen of an equal protection claim is differential governmental treatment, not differential governmental messaging.” Mot. 5 (quoting *Moore v. Bryant*, 853 F.3d 245, 250 (5th Cir. 2017)).² But “differential governmental

² In any event, the “differential governmental messaging” that Defendants blithely reference actually would raise substantial questions under the First Amendment. *See, e.g., ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1206 (11th Cir. 2009) (“Under *Pico*, . . . if the Board removed the book simply because it disliked the ideas contained in it and by removal of the book sought to prescribe political orthodoxy or other matters of opinion, then the Board violated the plaintiffs’ First Amendment rights.” (citing *Bd. of Educ. v. Pico*, 457 U.S. 853, 872 (1982))); *Pratt v. Indep. Sch. Dist. No. 831*, 670 F.2d 771, 779 (8th Cir. 1982) (invalidating the

treatment” is precisely what Plaintiffs allege here. The crux of Plaintiffs’ equal-protection claim is that H.B. 1557 has already had and will have a disparate impact on LGBTQ people—and that discriminatory purpose was a “motivating factor” in enacting H.B. 1577 under *Village of Arlington Heights v. Metropolitan Housing Development Corp.* 429 U.S. 252, 266 (1977); *see also, e.g., Parks v. City of Warner Robins*, 43 F.3d 609, 616 (11th Cir. 1995); *City of S. Miami v. DeSantis*, 561 F. Supp. 3d 1211, 1261 (S.D. Fla. 2021). The application of this framework triggers heightened scrutiny, which is fatal to H.B. 1557 here.

Title IX (Count VI). Defendants argue that Plaintiffs’ Title IX claim is “implausible,” Mot. 6, because H.B. 1557 regulates only “classroom instruction”—supposedly meaning only “curricular materials”—and Title IX does not require the use of any specific such curricular materials. Mot. 6. But Defendants’ cramped reading of the statute as governing solely “the use of particular textbooks or curricular materials,” Mot. 6, does not follow from the plain meaning of the statutory language for a number of reasons, including (of course) that the Legislature did not use the words “textbooks” or “curriculum” anywhere in the statute. Indeed, the words that the Legislature did use are far broader and therefore not susceptible to

school board’s removal of films from the curriculum, notwithstanding their availability in the library, where the board’s action “clearly indicat[ed] that the ideas contained in the films are unacceptable and should not be discussed or considered. This message is not lost on students and teachers, and its chilling effect is obvious”).

such a constricted reading. *See* FAC ¶ 112. Moreover, Defendants’ arguments in this regard fail to acknowledge H.B. 1557’s *actual* effects and harms, including disparate treatment on the basis of sex through exclusion from and denial of the benefits of equal participation in Florida’s public-education system. *See, e.g.*, FAC ¶¶ 173–260. To the extent Defendants take issue with the facts alleged in the Amended Complaint, or the way that school districts are interpreting the dictates of H.B. 1557, that is a basis for *authorizing* discovery to begin promptly, not a basis for curtailing it.

First Amendment (Counts III, IV, V). Defendants dismiss Plaintiffs’ First Amendment claims as providing no “arguable path to discovery” because they are “subject, at most, to rational-basis review.” Mot. 6. But Defendants’ casual reference to rational-basis review obscures the actually-applicable constitutional principles and requirements. Students have a “right to receive information and ideas,” and school officials may not exercise their discretion “in a narrowly partisan or political manner.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 870 (1982) (plurality). Furthermore, officials offend students’ First Amendment right to receive information where their actions are not “reasonably related to legitimate pedagogical concerns.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988). Thus, censoring student speech absent a showing of “material and substantial interference with schoolwork or

discipline, is not constitutionally permissible.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

Guided by these principles and authorities, courts regularly consider the factual motivation for state actions, whether under either the *Board of Education v. Pico*, 457 U.S. 853, or *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, standard. *See, e.g., ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1206 (11th Cir. 2009) (“Under *Pico*, . . . if the Board removed the book simply because it disliked the ideas contained in it and by removal of the book sought to prescribe political orthodoxy or other matters of opinion, then the Board violated the plaintiffs’ First Amendment rights.” (citations omitted)); *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517, 1520 (11th Cir. 1989) (discussing whether a school board’s motivation for removing material from the curriculum due to “sexuality” and “vulgar . . . language and subject matter” was reasonably related to “legitimate pedagogical concerns”); *Gonzalez v. Douglas*, 269 F. Supp. 3d 948 (D. Ariz. 2017) (finding that an effort to eliminate a Mexican-American Studies program from a public-school district violated students’ First-Amendment right to receive information where the effort was driven by discrimination).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Motion be denied and the Court order Defendants to respond to Plaintiffs' discovery requests.

Dated: July 15, 2022

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United States District Court Northern District of Florida

EQUALITY FLORIDA, ET AL,

)

Number: 4:22-cv-00134-AW-MJF

PLAINTIFFS,

)

v.

)

RONALD DESANTIS, ET AL,

)

DEFENDANTS.

)

Verified Motion For Injunction Pending Appeal against Defendant DeSantis

NOW COMES, Scott Huminski ("Huminski"), and under oath, swears, deposes, states and pursuant to F.R.C.P. 62 and F.R.App.P 8 moves that the Court issue an injunction pending appeal against Defendant DeSantis prohibiting his furtherance and continuance of his conduct intending to breathe life into a hopelessly *void ab initio* judgment issued in State v. Huminski, 17-mm-815, Lee County Court, that imposed fines, fees and costs upon Huminski that the State of Florida continues to attempt to collect to this day and otherwise benefit from the "criminal conviction" in a *sui generis* common law case that prejudices Huminski with ongoing constant and continuing collection activities harassing Huminski and prejudicing him with regard to employment, housing, credit and other prejudice that flows from a criminal conviction and **prohibits Huminski's communication with the entire government of Florida for life** (not dissimilar to the speech prohibitions foisted upon Plaintiffs) and continues to cause shock and injury to body and mind of Huminski, he moves as follows:

1. Huminski was prosecuting a civil case, Huminski v. Town of Gilbert, et al., 20th Circuit Court, 17-CA-421 in the spring of 2017.
2. Huminski filed Chapter 7 bankruptcy in April 2017 and his claims in Gilbert became assets of the estate in bankruptcy staying the civil matter, Gilbert, pursuant to 11 U.S.C. § 362.
3. Upon the trial court in Gilbert refusing to obey and respect the automatic stay of bankruptcy, Huminski removed Gilbert to the United States District Court (Bankruptcy Unit) on June 26, 2017 and the case was docketed as an adversary proceeding in the

Bankruptcy Court, Huminski v. Town of Gilbert, et al., 9-17-ap-00509-FMD (U.S.D.C. Middle District of Florida, Bankruptcy Unit) (“Gilbert Bankruptcy Case”).

4. There existed allegations of contempt, a *sui generis* common law offense under Florida law (also Federal law and the stare decisis in virtually all jurisdictions in the U.S.), in the Gilbert Bankruptcy Case that had been removed from the State Courts on 6/26/2017.
5. The State Court chose to hold a hearing in the removed case, Huminski v. Town of Gilbert, et al., three days after removal on June 29, 2017 in the 20th Circuit Court despite its status as removed to the federal courts under Bankruptcy Rule 9027 three days prior.
6. At hearing on 6/29/2017 in State court, after removal, the following true and correct excerpts from the sworn transcript of the June 29, 2017 State court hearing in Gilbert (removed on 6/26/2017) included these colloquies,

10 THE COURT: Okay. We're here on an order to
11 show cause. This is essentially an arraignment
12 proceeding today. So, I think the things that we
13 have to do today are set court dates for various
14 proceedings, as well as address issues of bond
15 and/or pretrial release, am I correct?

16 MR. SARLO: Yes, Judge.

17 THE COURT: Okay. So, first thing is bond
18 and/or pretrial release. Any arguments from
19 anybody?

20 MR. KUNASEK: Judge, the State will defer to
21 the Court with respect to that. I know there was
22 an issue with serving him with the initial order
23 to show cause. So, his availability may be an
24 issue and the Court's well aware of that more
25 than I am, so I will defer to the Court with

Pre-trial release is not an option for civil cases or *sui generis* common law cases nor is an “arraignment”, the State court proceedings continue,

8 MR. SARLO: The clerk very well may ask us --

9 THE COURT: I know in Collier County, because

10 I've done a couple of these proceedings in

11 Collier, they do open a new file. So, if you

12 want that to happen, I would think that

13 somebody's gotta ask -- ask the Clerk to do that.

14 Okay. So, let's see. Middle of August is

15 okay for everybody?

16 MR. KUNASEK: Yes, Your Honor.

17 THE DEFENDANT: No.

18 THE COURT: Could we do it at --

19 THE DEFENDANT: This case has been removed to

20 bankruptcy court, so I'm not good with that.

21 THE COURT: Pardon me?

22 THE DEFENDANT: This case has been removed to

23 bankruptcy court --

24 THE COURT: This case hasn't been removed to
25 any place, Mr. Huminski.

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1 THE DEFENDANT: Under bankruptcy rule 9027 --
2 THE COURT: Mr. Huminski, A, you're not a
3 lawyer and, B, this case doesn't get removed to
4 bankruptcy court. That's not how the law works.
5 Okay. You need to --

23 THE COURT: Yeah, 17-CA-421.

24 And, also, Madame Clerk, would you please
25 check with the clerk's office because, again, in

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23

1 Collier, they give -- they set up a new file.
2 It's a little bit difficult to have a civil -- a
3 criminal proceeding in a civil case. So, if you
4 could check with somebody about that, maybe we
5 can get that straightened out, too.

6 THE DEFENDANT: Your Honor, I'd like

The State Court continues illogically categorizing a *sui generis* common law offense, indirect contempt, as a statutory criminal offense in this passage and above,

21 This is a criminal proceeding. You can go to
22 jail for this. You have violated -- it is
23 alleged that you have violated court orders.
24 It's alleged you have committed indirect criminal
25 contempt. You can go to jail.

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Note that Huminski was convicted of contempt in the above passage, amazingly, at arraignment in this alleged "criminal case" despite the non-existence of a statute or criminal code defining the alleged *sui generis* offense (pending in the

federal courts after the State Court was divested of jurisdiction by the removal of 6/26/2017) as a statutory misdemeanor or a felony. The proceedings continue,

8 THE DEFENDANT: The protective orders mention
9 civil, as well, and civil can be removed to
10 bankruptcy court.

11 THE COURT: No, sir, you're misinformed.
12 Nothing gets removed from this court to
13 bankruptcy court. That doesn't happen ever.

14 So, you need to talk to your attorney, who
15 I've appointed because he's the one that knows
16 the law.

17 THE DEFENDANT: He doesn't know bankruptcy
18 law.

Apparently, a delusional jurist in the above passage believes that proceedings held by her civil, criminal or sui generis common law are absolutely immune from removal to federal court and the claims by the federal courts that they have jurisdiction by operation of a self-executing notice of removal filed in both the State and Federal Courts on 6/26/2017 can be disregarded as nonsense. Despite the Supremacy Clause, this particular State Court believes it is superior to the federal courts and can ignore the jurisdiction of the federal courts.

7. Huminski filed his Notice of Removal of Gilbert on 6/26/2017 in both State and Federal Court and served them on the same date in compliance with Bankruptcy Rule 9027.
8. The now removed federal action Huminski v. Town of Gilbert, et al., 9-17-ap-00509-FMD (U.S.D.C. Middle District of Florida, Bankruptcy Unit) previously the State Court Gilbert case, 17-CA-421, 20th Circuit, morphed into State v. Huminski, 17-MM-815, Lee County Court via the manufacture of a forged County Court order by the government (prosecutors, court personnel, etc.), not a judge, that was filed in the Lee County Court and held out to be a legitimate County Court order when in reality it was a transparent forgery. See generally, Motion to Intervene.

9. Huminski was not served with any commencement document in State case State v. Huminski, he was served with a show cause order in the Gilbert case (not State v. Huminski) absent 117 pages of attachments which a State's witness confirmed at trial as not served in the original State civil case. There was no service in State v. Huminski and the record contains no proof of service.
10. The only document that resembles a charging/commencement document in State v. Huminski, a forged show cause order, mentioned 117 pages of attachments that were not filed until the date of trial and alleged conviction and Huminski's motion for a bill of particulars was denied when he sought to determine the basis of State v. Huminski. See Geary v. State, 139 So. 2d 891 (Fla. 3d DCA 1962) If a court enters an order prior to the filing of proper pleadings, the court lacks jurisdiction. Lovett v. Lovett, 93 Fla. 611, 112 So. 768, 775-76 (1927).
11. During 2021 and 2022, Defendant DeSantis conspired with his attorney, Attorney General Ashley Moody, Esq., to foil Huminski's attempts in the Florida 11th Judicial Circuit and the Florida Third District Court of Appeal to vacate and/or declare void the **lifetime prohibition on communication with the entire State of Florida government** and declare the monetary judgment rendered in State v. Huminski void *ab initio*, stop the collection activities by the State on the void *ab initio* debt arising from State v. Huminski and to declare the criminal conviction void *ab initio* thereby freeing Huminski from the ongoing burden and prejudice the criminal conviction has upon Huminski, or any citizen for that matter, and clear the way for Huminski's obtaining a Florida Driver's License which is currently prohibited because of the unpaid costs/fees/fines arising out of State v. Huminski and remedy/vacate the **perpetual speech prohibition with the entire State of Florida** set forth in the judgment in State v. Huminski.
12. The judgment obtained by the State of Florida in State v. Huminski contains the provision that **Huminski not communicate with the entire government of Florida in perpetuity**, a First Amendment violation that Defendant DeSantis along with his counsel (Ashley Moody, Esq.) endeavored to make permanent and maintain in 2021 and 2022 with DeSantis' filings in the Florida 11th Circuit and Third District Court of Appeal. Similar future unconstitutional conduct of the Governor must be enjoined pursuant to the First Amendment and rudimentary Due Process. The top executive of a State should not also be the chief civil rights violator of a State and violator of 18 U.S.C. §§ 241, 242, criminal violations that can not be addressed in a civil matter.

13. An attorney (Ashley Moody, Esq., Florida Attorney General) and her client (Defendant DeSantis) share a unified entity/identity status during Huminski's State court actions, they are one in the same, and this creates a *per se* conspiracy presentation and they filed multiple Motions to Dismiss and other adverse papers in the State courts to maintain the State's ability to collect on its ill-gotten gains achieved in State v. Huminski and continue the **lifetime speech prohibition** that Huminski suffers.
14. Defendant DeSantis used multiple legal techniques to assure that the *void ab initio* judgment in State v. Huminski haunted Huminski for the remainder of his life in violation of procedural and substantive Due Process which forbids and negates/nullifies judgments rendered in the absence of any and all jurisdiction. Forgery of the commencement document in State v. Huminski also violates rudimentary Due Process' requirement for fundamental fairness. Using crime, forgery, to transform a *sui generis* common law offense into a statutory crime is repulsive to Due Process, yet, Defendant DeSantis seeks to make this constitutional transgression permanent.
15. The conduct in 2021 and 2022 of Defendant DeSantis transparently sought to deny Huminski his rights under the First Amendment and Due Process with multiple Motions to Dismiss and other adverse papers that foiled Huminski's legitimate claims to be free of burden from a *void ab initio* judgment and Defendant DeSantis succeeded in this scheme/conspiracy with the assistance and counsel of Ashley Moody, Esq..
16. The conduct of Defendant DeSantis and counsel achieved a cover-up of the felony forgery of a court order by prosecutor Anthony Kunasek, Esq. which led to the filings in this Court by Huminski. Conduct that constitutes acts of moral turpitude by Defendant DeSantis and counsel as accessories to the felonies of Prosecutor Kunasek (deceased - suicide).
17. Approximately 30 days after the Huminski filings in the instant matter detailing the forgery, corruption and crime of Mr. Kunasek, he committed suicide with a gunshot wound to the head. Litigation that Defendant DeSantis forced via his choice to cover-up the crimes of Kunasek rather than addressing them.
18. Upon information and belief, Defendant DeSantis could have stipulated to the relief being sought by Huminski and directed the various governmental entities to clear Huminski's name and credit rating and **end the perpetual First Amendment prohibitions**, but, chose to see to it that the Treasury of the State of Florida enjoyed unjust enrichment related to the costs, fines and fees it is still attempting to collect from

Huminski related to State v. Huminski, a matter that is irredeemably *void ab initio*. A Constitutional, moral, ethical and rational approach to the *void ab initio* judgment probably would have spared the life of prosecutor Kunasek. Defendant DeSantis' handling of the Huminski State cases in 2021 and 2022 proximately caused the suicide of Attorney Kunasek in April of this year one month after the filings of Huminski in this case. Death is a predictable side-effect of Defendant DeSantis' furtherance of the patently criminal governmental conduct infecting State v. Huminski. Many times the cover-up can be worse than the crime.

19. Huminski's motion for intervention sought declaratory and injunctive relief against Defendant DeSantis concerning his conduct related to the *void ab initio* judgment in State v. Huminski and the associated **First Amendment prohibitions**.
20. A true and correct excerpt from the final judgment order and Mr. Kunasek (deceased) requesting the lifetime speech prohibition (below and at Para. 29) after the Court stripped Huminski of defense counsel despite his objection without a Faretta hearing, this speech prohibition is listed in the final written order as a lifetime punishment along with the costs, fees and fines that the State of Florida attempts to enforce and collect on to this day which will continue in perpetuity (the costs, fees, fines and **speech prohibitions** listed in the judgment order do not expire) is as follows:

With to update Case w/ Defendants information Listed
~~DEFENSE MOTION FOR MISFEASANCE - DENIED~~ ~~MOTION TO DISMISS - DENIED~~ ~~ANY FUTURE FILINGS ARE~~
~~TO BE WITHIN THE SIGNATURE OF A LICENSED ATTORNEY~~ ~~IN THE CIVIL OR CRIMINAL CASE~~
Pre-Sentence Investigation/Recommendation

CUS Fees Due & Owng in the amount \$

21. A true and correct excerpt of the docketing of State v. Huminski that lists F.S. 900.04 as the **NON-criminal** statute Huminski was prosecuted under and "No charge – No level" is as follows,



17-MM-000815 : State of Florida vs Huminski, Scott A

Case Type:	Misdemeanor	Date Filed:	06/30/2017
Location:	County Criminal	UCN:	362017MM000815000ACH
Judge:	James R Adams	Status:	Closed
Citation Number:	Misdemeanor	Appear By Date:	

Parties				
Name	DOB	Type	Attorney	Atty Phone
State of Florida		Plaintiff	Anthony Kunasek	239-533-1000
Scott Huminski	12/01/1959	Defendant		

Charge Details				
Offense Date	Charge	Plea	Arrest Disposition	Sentence
06/05/2017	1. CONTEMPT OF COURT CIRCUIT OR COUNTY Statute: 900.04 No Charge - No Level	3/16/2018 Pled Not Guilty	3/16/2018 Non Jury Trial - Adjudicated Guilty	

22. A true and correct docketing of the Gilbert case upon removal to the federal courts is as follows (note the text: "Date Removed From State" below of 6/26/2017 which was followed by the State court hearing of 6/29/2017 "arraigning" Huminski for the alleged "crime" of contempt, a *sui generis* common law offense – not a crime),

Name	Case No.	Case Title	Chapter / Lead BK case	Date Filed	Party Role	Date Closed
Huminski, Scott Alan (pty) (2 cases)	2:17-ap-00509-FMD	Huminski v. Town of Gilbert, AZ et al	Lead BK: 2:17-bk-03658-FMD Scott Alan Huminski	06/26/17	Plaintiff	08/24/17
	2:17-bk-03658-FMD	Scott Alan Huminski	7	04/28/17	Debtor	08/24/17

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U.S. Bankruptcy Court
Middle District of Florida (Ft. Myers)
Adversary Proceeding #: 2:17-ap-00509-FMD

Assigned to: Chief Judge Caryl E. Delano
Lead BK Case: 17-03658
Lead BK Title: Scott Alan Huminski
Lead BK Chapter: 7
Show Associated Cases

Date Filed: 06/26/17
Date Terminated: 08/24/17
Date Removed From State: 06/26/17

Demand:

Nature[s] of Suit: 01 Determination of removed claim or cause

23. Following are true and correct sworn transcript excerpts from State v. Huminski with the Court describing how Circuit Court orders “dissolved” into the County Court (a court of inferior jurisdiction) and how a lower court (a County Court) was able to divest jurisdiction from a higher court (Circuit Court) or as the County Court stated “Well, they’ve [the Circuit Court] divested themselves of jurisdiction ...” (which never happened),

19 THE DEFENDANT: Not in the circuit court.

20 THE COURT: Okay.

21 THE DEFENDANT: The circuit court order --

22 THE COURT: Well, they’ve divested themselves

23 of jurisdiction at this point, so the orders that

24 I signed relative to your case are the warrants

25 that you should be attending to.

24. Upon information and belief the only way a Court can divest itself of jurisdiction, as mentioned in the previous paragraph, is via a dismissal of a case and Judge Krier has mentioned that the case was being transferred from civil to criminal court, a procedure that has no basis in statute, Rule or any other Florida authority. This corrupt procedure placed the “contempt” portion of the civil case in the position of concurrent pendency before two State courts, a Circuit Court and a County Court. It was a new invention of the 20th Circuit and Lee County courts used to harass and terrorize with the misuse and abuse of the power of criminal prosecution. Below is a true and correct transcript excerpt with the Court explaining how the hijacking of a Circuit Court case by a County Court impacts the orders of the Circuit Court (this particular jurist had been condemned for multiple case hijackings in the past, YORLAN ESPINOSA PENA v. STATE OF FLORIDA, 2D17-4465 (2nd DCA, Fla. Dist. Ct. App. 2018)),

1 THE DEFENDANT: I don't think they overrule
2 the circuit court orders of Judge Krier.

3 THE COURT: Sir, the circuit orders -- the
4 circuit court orders of Judge Krier have sort of
5 been dissolved into this case. So, any
6 subsequent orders addressing similar issues that
7 I've issued are the ones that you should be
8 concerned about.

9 THE DEFENDANT: That's not evident on the
10 record in the circuit court case --

25. A true and correct excerpt from the sworn transcript concerning personal jurisdiction is as follows:

10 THE DEFENDANT: The service part is the most
11 critical part of that motion. It says parties
12 are to go to the internet to get copies of this
13 order.

14 THE COURT: Okay.

15 THE DEFENDANT: Showing the exact procedure
16 that I find is a problem in this case is that I
17 was never served with anything.

18 THE COURT: Okay. But that's the --

19 MR. KUNASEK: I don't have a position -- the
20 State doesn't have a position on that, Judge.

21 THE COURT: Okay. All right. Okay. I don't
22 -- okay. Mr. Huminski, I guess I'm not going to
23 rule on that at all. All right.

26. A true and correct sworn excerpt from the transcript concerning the stripping of a criminal defendant of defense counsel (6th Amendment) is as follows:

11 THE DEFENDANT: Just that there was no
12 Faretta Hearing, which is required to strip
13 someone of counsel, like I was. It's Faretta
14 versus California. And that's been adopted by
15 the Florida Supreme Court as a standard in
16 Florida, as well. And it's sort of like when you
17 take a plea agreement, it goes through a specific
18 colloquy with the defendant saying, you know, you
19 understand you're giving up the right to
20 attorney, etcetera, etcetera, just as -- similar
21 to a plea agreement.

22 THE COURT: Okay. Anything from the State on
23 that issue?

24 MR. KUNASEK: No, Judge.

27. A true and correct excerpt from Huminski's examination of the deputy that served a show cause order in Huminski v. Town of Gilbert, et al, 17-CA-421, 20th Circuit Court and never served anything in State v. Huminski, 17-MM-815, Lee County Court and what he did serve in Gilbert was missing 117 pages of content is as follows:

11 Q. Are there any exhibits listed if you read
12 that carefully? It refers to exhibits. See exhibit
13 A, see exhibit B, etcetera, etcetera.

14 A. Yeah, it mentions exhibits.

15 Q. And did you serve those exhibits?

16 A. I don't think so. I just served these in
17 front of me here.

18 THE DEFENDANT: Exactly. Thank you.

22 THE DEFENDANT: Your Honor, jurisdiction is
23 achieved though ser -- personal jurisdiction is
24 achieved through proper service, which hasn't
25 taken place by the State's own witness.

28. Only 3 pages were in front of the State's witness in the colloquy from the prior paragraph, not the full 120 pages that should have been served that constituted the full show cause order in the State Circuit Court. The State of Florida in the prior paragraph indicates its belief that service in a civil case where the State is not a party suffices as service in a criminal case in a different court where the State injected itself as plaintiff absent the filing of a charging document whereby the commencement document was a forged court order filed by an unknown entity and not signed by an attorney representing the Plaintiff, the State of Florida, not did it list the State as a Plaintiff, yet, the caption State v. Huminski was somehow adopted by the clerk's office indicating widespread corruption.

29. A true and correct sworn transcript excerpt describing the overall goal of the State of Florida in regarding the *void ab initio* State v. Huminski case was to silence core protected political expression critical of government is as follows:

7 exhibits, he often times will send email blasts
8 including 300 people. So, I would ask that that
9 immediately cease and desist with respect to
10 communication, third party or direct or indirect.

11 THE COURT: Mr. Huminski?

12 THE DEFENDANT: If he could be more specific
13 in that. That's kind of a migration thing and
14 the first amendment requires that any such orders
15 impacting speech be narrowly tailored to a
16 specific governmental interest. So, if he -- if
17 he can narrowly tailor it that would be nice,
18 instead of just saying don't email anyone.

19 THE COURT: I think he's talking about the
20 parties who are -- and I'm going to assume that
21 are involved -- and I don't know, for lack --
22 I'll say that -- you know, what's going on with
23 the town of Gilbert, Arizona and how they are
24 related, to some extent, to Lee County.

25 MR. KUNASEK: I don't believe -- well,

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1 they're related to the extent that they were

2 brought in as a defendant in this -- Mr.

3 Huminski's case.

4 THE COURT: Okay.

5 THE DEFENDANT: That extends the Court's
6 jurisdiction nationwide, I think, that request.

7 THE COURT: What's the other issue that you
8 have, Mr. Huminski?

9 THE DEFENDANT: I don't -- did I mention one?

10 THE COURT: You did.

11 THE DEFENDANT: Oh, for sentencing, well, I
12 guess I'll skip it.

13 THE COURT: Okay. I'll add in the additional
14 condition of probation that he is not to

15 communicate with the other individuals in the

16 other case, also, as requested by the State.

30. In the prior paragraph, the Court orders the protection of some 300 unspecified non-parties to State v. Huminski as a condition of probation, however, when distilled to a written order, the First Amendment banishment extends in perpetuity (See Para. 20 above) and it is not restrained to only the probationary period and Huminski was jailed prior to the end of his probation without bond for not paying costs, fines and fees in the case so the probationary period is not yet complete. Huminski's filing of bankruptcy and the removal to bankruptcy court of the *sui generis* common law offense are an overwhelming portion of the record in the State v. Huminski. Essentially, Huminski was incarcerated in a debtors prison without bond when the record contained absolute proof that Huminski was bankrupt.

31. Attached hereto as Exhibit "A" is a copy of a true and correct settlement demand issued to the parties.

Memorandum of Law

The four factors the Court must evaluate in determining whether to grant a motion for an injunction pending appeal are as follows:

“(1) whether the stay [injunction] applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”. See Hilton v. Braunskill, 481 U.S. 770, 776, 107 S.Ct. 2113, 2119 (1987); see also Robinson v. Attorney Gen., 957 F.3d 1171, 1176-77 (11th Cir. 2020); see also Touchston v. McDermott, 234 F.3d 1130, 1132 (11th Cir. 2000) (en banc) (applying same standard for injunction pending appeal).

A. Likelihood of Success on the Merits

No Court, Governor, Attorney General or entity can breathe life into a hopelessly *void ab initio* judgment such as in State v. Huminski that was commenced in violation of a removal to the federal courts, that was: (1) commenced completely without service, (2) commenced without service of a document listing the State of Florida as a plaintiff nor signed by an attorney representing the State, and (3) was prosecuted without subject matter jurisdiction because a County Court (a Court of limited jurisdiction) can not hear contempt arising in a Circuit Court (a Court of general jurisdiction). See South Dade Farms v. Peters, 88 So. 2d 891 (Fla. 1956) (emphasis added),

“In the opinion last cited this court adopted the language of the Supreme Court of the United States in the leading case of Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 31 S. Ct. 492, 501, 55 L. Ed. 797, from which we quote also the following:

*“There has been general recognition of the fact that the courts are clothed with this power, and must be authorized to exercise it **without referring the issues of fact or law to another tribunal** or to a jury in the same tribunal. For, if there was no such authority in the first instance, there would be no power to enforce its orders if they were disregarded in such independent investigation. Without authority to act promptly and independently the courts could not administer public justice or enforce the rights of private litigants. Bessette v. W.B. Conkey Co., 194 U.S. 324 337, 24 S. Ct. 665, 48 L.Ed. [1907] 1005.”* ”

If a court enters an order prior to the filing of proper pleadings, the court lacks jurisdiction. Lovett v. Lovett, 93 Fla. 611, 112 So. 768, 775-76 (1927).

Huminski will prevail concerning a case that was commenced via the forgery of a court order, in the wrong court and without service which has now led to the suicide of the prosecutor that forged the faux court order. Huminski will prevail related to the **lifetime speech prohibition** foisted upon Huminski in a patently *void ab initio* court case which can not stand. No entity can breathe life into a *void ab initio* judgment that contains a **perpetual communication prohibition**, far more extreme than the censorship foisted upon the Plaintiffs, preventing any and all communication with the entire State government – a *per se* outrageous First Amendment violation that shocks the conscious.

B. Irreparable Harm

Huminski suffers the *per se* harm, injury and prejudice that flows from a criminal conviction regardless of the fact that *sui generis* common law contempt is not defined as a statutory misdemeanor nor felony in Florida. Huminski was prosecuted criminally under F.S. § 900.04, a statute that does not authorize a statutory misdemeanor nor felony. To satisfy the irreparable harm requirement, Huminski need only demonstrate that absent a preliminary injunction, he is “likely to suffer irreparable harm before a decision on the merits can be rendered.” *Winter v. NRDC*, 555 U.S. 7, 22 (2008) (citation omitted). The sole motive behind the fraudulent criminal motivation was to immediately silence Huminski’s speech via conditions of pre-trial supervision conditions of release in a *sui generis* common law case and ultimately the **silencing of any and all speech by Huminski with the entire government of Florida for life.**

The State of Florida has engaged in non-stop harassment concerning the *void ab initio* debt that arose in State v Huminski causing shock and injury to Huminski’s mind and body. Huminski has been fully disabled for over a decade with Post Traumatic Stress Disorder, General Anxiety Disorder and Social Phobia which elevates the harm, injury and damage Huminski suffers as a result of the relentless collection activities of the State that Defendant DeSantis took steps to protect and make permanent with his filings in the State courts opposing a declaration that the *void ab initio* judgment in State v. Huminski was indeed *void ab initio* to cover-up the official crime of forgery by prosecutor Kunasek (deceased – suicide 30 days after the motion to intervene filed in this case). As all “convicts”, Huminski suffers prejudice and discrimination concerning credit, housing, employment and all areas negatively impacted by a bogus criminal conviction.

Huminski suffers per se irreparable First Amendment harm and injury from the lifetime speech prohibition imposed in State v. Huminski that Defendant DeSantis endeavored to protect with extreme zeal and disdain for the Rule of Law, most notably, the U.S. Constitution.

~~WORK TO UPDATE CASE W/ DEFENDANT'S INFORMATION LISTED~~ ~~CUS Fees Due & Owning in the amount \$~~
~~DEFENSE MOTION FOR MATERIAL DENIED~~ ~~MOTION TO DISMISS DENIED~~ ~~ANY FUTURE FILINGS ARE~~
~~TO BE UNDER THE SIGNATURE OF A LICENSED ATTORNEY~~ ~~IN THE CIVIL BE HUMINSKI CASE~~
~~Pro se litigant is not permitted to file documents in this case~~

C. The issuance of an injunction will not harm any parties

A party seeking a preliminary injunction must demonstrate both “that the balance of equities tips in [its] favor, and that an injunction is in the public interest.” Winter, 555 U.S. at 20. “These factors merge when the Government is the opposing party.” Nken v. Holder, 556 U.S. 418, 435 (2009). No party opposed intervention in this case clearly targeting the herein mentioned moral turpitude exhibited by Defendant DeSantis.

An injunction preventing Defendant DeSantis from engaging in any activity intending to enforce or profit the State treasury and continue a **perpetual speech banishment** that are products of a hopelessly *void ab initio* judgment achieved in the absence of any and all jurisdiction will not prejudice any party and will simply comply with the First Amendment, Due Process and the jurisdictional requirements prescribed in Due Process. A judgment entered in the absence of personal jurisdiction, subject matter jurisdiction and commenced in violation of a federal removal simply can not stand despite Defendant DeSantis’ desperate attempts in 2021 and 2022 to cover up felony forgery by prosecutor Kunasek (deceased – suicide) in State courts with motions to dismiss and other opposition papers. Defendant DeSantis’ zeal to propagate Police State **silencing of core protected political expression critical of government** has risen to a level in Defendant DeSantis whereby it supersedes the oath taken by him concerning both State and Federal constitutions when he became the Governor of Florida.

No party has opposed Huminski’s intervention in Equality Florida v. DeSantis, et al, an overwhelming indicator of lack of prejudice.

D. Public policy – official crime – governmental acts of moral turpitude – corruption

The need “to prevent irreparable injury to the parties or to the public” pending review is essential in this matter. Scripps-Howard, 316 U.S., at 9, 62 S.Ct. 875. Failure to enjoin Defendant DeSantis’ obsession with **silencing core protected political speech** critical of

government via his scheme with Ashley Moody, Esq. to attempt to breathe life into a hopelessly *void ab initio* State v. Huminski in the State courts in 2021 and 2022 violates public policy and the public interest. The public interest and public policy demands that a case initiated with a forged court order absent any and all jurisdiction is dispatched in an expedient manner that does not include a Governor covering-up the bold courthouse crimes to maintain a **lifetime speech prohibition** regarding any speech to the entire Florida government in perpetuity.

The herein-mentioned conduct and the other filings of Huminski in the instant matter set forth conduct of Defendant DeSantis involving moral turpitude concerning the civil rights of Huminski. Notably, Defendant DeSantis' efforts in 2021 and 2022 to maintain Huminski's prohibition concerning the **perpetual lifetime ban on communication** with the entire State of Florida government is a substantial example of violation of rights under the color of law and conspiracy against rights between the Governor and his Attorney General concerning Huminski's First Amendment rights and Due Process – federal crimes. 18 U.S.C. §§ 241, 242. Terminating this criminal conduct in this civil context under constitutional torts serves the public interest prior to any criminal proceedings that may follow in other fora. Crimes can only be prosecuted by governmental entities.

The **lifetime speech prohibition** foisted upon Huminski was achieved in the complete absence of any and all jurisdiction because Huminski was never served in State v. Huminski and there exists no charging document authored by the State that commenced the “criminal” prosecution of a *sui generis* common law offense. Only a forged manufactured order taken by the government from another Court (20th Circuit Court) and then modified to appear as a legitimate County Court order in State v. Huminski existed as a document that resembled a charging document. This fraudulent forgery was then held out by the government to a County Court as a legitimate court order and commencement document in State v. Huminski. Governmental fraud and forgery used to initiate an illegitimate criminal case violate public policy and does shock the conscientiousness of a reasonable person. Such conduct constitutes State-sponsored domestic terrorism supported and embraced up to the highest level in State government; the Governor and Attorney General wielding the vast power of the State.

Further, the conduct of Defendant DeSantis which covered-up the forgery of a court order (the alleged charging document) in State v. Huminski proximately led to the suicide of the prosecutor who engaged in the forgery. The suicide occurred 30 days after the forgery was proffered in the instant matter by Huminski in court papers. Had Defendant DeSantis along with his co-conspirator Florida Attorney General Ashley Moody, Esq. acted morally and

ethically and taken steps to end the lifetime speech prohibition and constant attempts by the government to derive pecuniary benefit from the *void ab initio* judgment rendered in State v. Huminski and otherwise prejudice Huminski, the life of prosecutor Anthony Kunasek, Esq. may have been spared. The morally bankrupt herein-mentioned conduct of Defendant DeSantis violates public policy.

Public policy prohibits governmental wholesale violation of the First Amendment and Due Process. Public policy also weighs heavily against the cover-up of serious courthouse crimes such as forgery of a court order and actions by the State government pursuing court costs, fines and fees rendered in the absence of any and all jurisdiction and lifelong First Amendment deprivations.

Public policy and the public interest prohibits a Governor, Defendant DeSantis, from attempting to breathe life into a hopelessly *void ab initio* court judgment procured with forgery and fraud.

Some of the felony governmental/official State crimes inherent in State v. Huminski repugnant to public policy are,

- Forgery
- Fraud
- Official Misconduct

The aforementioned coordination of State prosecutors, judges, the State Attorney General and the Governor could easily constitute RICO and conspiracy crimes as well. There were many cooks stirring this kettle of corruption aside from the prosecutor who took his own life as a result of the filings in this case including the 20th Circuit State's Attorney, Judge Elizabeth Krier, Judge James Adams and numerous courthouse staff. Huminski concedes that this case is not the proper litigation to pursue criminal charges by himself nor the Plaintiffs, however, there is quite an overlap between constitutional torts and the criminal conduct set forth herein and public policy supports stopping the acts of moral turpitude by Defendant DeSantis in both a civil and criminal context.

Huminski can not prosecute criminal violations, he is not a prosecutor, however, public policy can certainly weigh in opposing this vile governmental crime even when government does not step in to stop the debauchery and corruption. When government fails to monitor its own corruption, side effects such as the suicide of prosecutor Anthony Kunasek, Esq. appear. A suicide that could have been avoided if the Governor chose to address the official

crime and corruption instead of covering it up. An injunction should issue against Defendant DeSantis before more adverse events occur related to the herein described governmental misconduct. Defendant DeSantis had the opportunity to direct his counsel, the Florida Attorney General, to stipulate to a declaration in State Court to vacate the judgment in State v. Huminski thereby restoring Huminski's First Amendment rights, but, refused to take the ethical and moral course of conduct. The opposite approach was taken by Defendant DeSantis resulting in the suicide of prosecutor Kunasek. Attorney General Ashley Moody, Esq. is the top law enforcement and prosecutorial authority in the State of Florida and certainly could have stipulated to end the First Amendment violations and void judgments which can be remedied in any court and at any time where they have become an issue. The Attorney General also shares responsibility for the suicide of Anthony Kunasek, Esq..

A judgment entered without due service of process is void. *See Gelkop v. Gelkop*, 384 So.2d 195 (Fla. 3d DCA 1980); *McAlice v. Kirsch*, 368 So.2d 401 (Fla. 3d DCA 1979); *Grahn v. Dade Home Services, Inc.* 277 So.2d 544 (Fla. 3d DCA 1973). On motion, a court may, at any time, relieve a party from a void final judgment. *See Sams Food Store, Inc. v. Alvarez*, 443 So.2d 211 (Fla. 3d DCA 1983); *Tucker v. Dianne Electric, Inc.* 389 So.2d 683 (Fla. 5th DCA 1980); *McAlice*. *See also Ramagli Realty Co. v. Craver*, 121 So.2d 648 (Fla. 1960) (the passage of time cannot make valid that which has been void).

Any judgment or order procured from any court by the practice of fraud or deception may in be set aside at any time – such as the forged commencement document filed in Huminski v. State failing to list the State as a party and not signed under the authority of any prosecutorial entity for the State of Florida, plaintiff in State v. Huminski. A void judgment is a nullity, a brutum fulmen and is subject to collateral attack and may be stricken at any time. 19 Fla.Juris. Void Adjudications, Sect. 383 and the cases there cited. The passage of time cannot make valid that which has always been void. "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907). "The law is well-settled that a void order or judgment is void even before reversal", VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348, 41 S. Ct. 116 (1920). Official corruption is the only discernible reason why the Governor would engage in furtherance of a void judgment ordering a lifetime speech prohibition in stark violation of the founding documents. Covering up the crimes of the late Prosecutor

Kunasek was the highest priority for Defendant DeSantis', a priority that ended up killing the prosecutor the Governor was assisting.

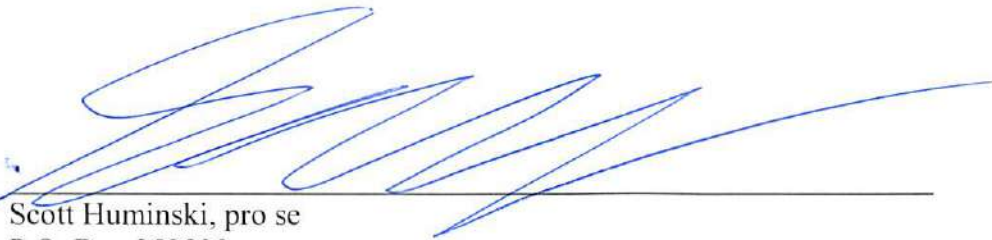
Defendant DeSantis, a graduate of Yale and Harvard Law, knew exactly what he was doing concerning the herein-mentioned conduct. A first year law student would realize the corrupt and criminal nature of the material herein and would reject the furtherance of the crimes of Defendant Kunasek and cooperating government employees/judges/court personnel.

Despite the existence of bedrock authority rejecting Defendant DeSantis' conduct seeking to maintain a **lifelong speech/communication banishment** between Huminski and the entire Florida government, ... "*might appears to be right*" even given the Kunasek loss of life related to this issue. Government oppression and repression under the governance of Defendant DeSantis unfortunately is a higher objective than the preservation of human life, to wit: the life of Chief of Special Prosecutions for the Florida 20th Circuit, Anthony Kunasek, Esq taken by his own hand via a gunshot wound to the head 30 days after the publication of his crimes in the instant matter. A government win at all costs mentality and *let the Rule of Law be damned* approach to fundamental constitutional rights by both the Florida Governor and Florida Attorney General.

Prayer for Relief

WHEREFORE, the Court should enjoin Defendant DeSantis from engaging in any course of conduct intending to benefit the State of Florida, financially or otherwise with regard to the **lifetime speech banishment** or *void ab initio* judgment issued in State v. Huminski. The injunction should also enjoin Defendant DeSantis from engaging in any conduct in furtherance of the prejudice to Huminski that flows from the *void ab initio* judgment rendered in State v. Huminski including preventing Huminski from obtaining a Florida driver's license. The *void ab initio* "criminal" costs, fines and fees (levied in a *sui generis* common law case) prohibit Huminski from obtaining a Florida driver's license.

Dated at Palm Coast, Florida this 17th day of July, 2022.



Scott Huminski, pro se
P.O. Box 353820
Palm Coast, FL 32135
(239) 300-6656
S_Huminski@live.com

Sworn and Subscribed to before me on this 17th day of July, 2022 in Flagler County, Florida.



Notary



KYLE RASMUSSEN
Notary Public
State of Florida
Comm# HH260959
Expires 5/4/2026

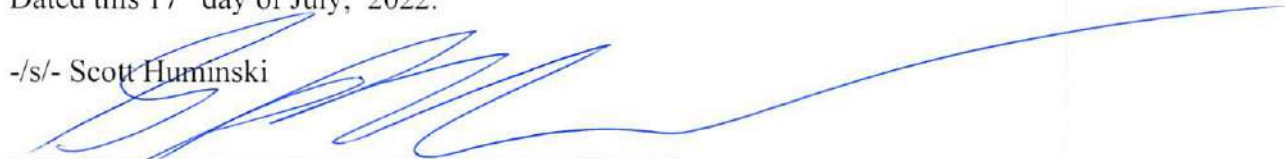
Exp. = 05/04/2026

Certificate of Service

Copies of this document and any attachment(s) was served upon the parties via the U.S. Mails and/or email and/or the e-filing system.

Dated this 17th day of July, 2022.

-s/- Scott Huminski



Scott Huminski

<attachments>

Exhibit “A”



scott huminski

To: Christopher Sutter; Katia Marques; Martine Legagneur; Stacey Blume; rkaplan@kaplanhecker.com; CStoll@ncnights.org; liz@elizabethschwartz.com; nadine@eqfl.org; geann y@eqfl.org; mark@eqfl.org; nick@eqfl.org; todd@eqfl.org; mark@eqfl.org; robin@eqfl.org; robert@eqfl.org; rene@eqfl.org; andrew@eqfl.org; carlos@eqfl.org; don@eqfl.org; paul@eqfl.org; stratton@eqfl.org; dan@eq fl.org; david@eqfl.org; joe@eqfl.org; brittany@eqfl.org; brandon@eqfl.org; michael@eqfl.org; nikole@eqfl.or g; jon@eqfl.org; wesley@eqfl.org; yordanos@eqfl.org; salvatore@eqfl.org; benjamin@eqfl.org; mary@eqfl.or g; de@eqfl.org; ian@eqfl.org; Joel Valez-
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Kadah; sandymodell@aol.com; gzerman@hotmail.com; Christopher Crowley

Sun 6/19/2022 3:15 PM

Instead of engaging in endless litigation of a hopelessly void ab initio judgment with its perpetual speech prohibitions and other infirmities, I propose as settlement the following,

Stipulation to a declaration that State v. Huminski, 17-mm-815 is void ab initio in its entirety including the judgment, costs, fines, fees and the lifetime speech prohibition.

This demand will be withdrawn at the end of the week.

Also the State must agree to end the "open season" on crime against the Huminski family and address the seemingly state-sponsored perjury of James Greco in 20th Circuit Court whereby he perjured himself in writing and recanted and admitted perjury in the first hearing in case, 362020DR030822A001CH, constituting felony perjury, felony abuse of a disabled adult and felony abuse of an elderly adult.

https://cdn.muckrock.com/outbound_request_attachments/s_huminski%40live.com/127252/motion_for_injunction_pending_appeal_compressed.pdf

At the above link is my draft for an injunction pending appeal for the district court. A similar document will be filed in the 11th Circuit in Atlanta if Florida insists on litigating these issues endlessly. -- scott

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS



CASE PROCESSING MANUAL
(CPM)

EFFECTIVE DATE: AUGUST 26, 2020

INTRODUCTION

The mission of the Office for Civil Rights (OCR) is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights. The Case Processing Manual (CPM) provides OCR staff and stakeholders with information regarding how OCR promptly and effectively investigates and resolves complaints, compliance reviews, and directed investigations, to ensure compliance with the civil rights laws and regulations enforced by OCR.

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ARTICLE I: EVALUATION

Upon receipt of information, OCR will determine whether the information provided to OCR is subject to further processing pursuant to applicable statutes and regulations and OCR's CPM. As appropriate, OCR will provide complainants¹ with assistance regarding the nature of their rights and of the OCR investigation process. Also, as appropriate, OCR will provide assistance to complainants who are individuals with disabilities,² individuals of limited English proficiency, and individuals whose communication skills are otherwise limited. All written information provided to OCR should include the sender's contact information.³ Written information may be filed online, as well as by mail, electronic mail, or fax.

SECTION 101 PRIVACY ACT AND FREEDOM OF INFORMATION ACT

To investigate a complaint, OCR may collect and analyze personal information. The Privacy Act of 1974, as amended 5 U.S.C. § 552a (Privacy Act) and the Department's Privacy Act regulations at 34 C.F.R. Part 5b, Section 444 of the General Education Provisions Act (commonly referred to as the Family Educational Rights and Privacy Act (FERPA)), 20 U.S.C. § 1232g and FERPA's implementing regulations at 34 C.F.R. Part 99, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and FOIA's implementing regulations at 34 C.F.R. Part 5, may apply to the personal information collected by OCR and, where applicable, govern its disclosure. OCR does not reveal the name or other personal information about an individual unless: (1) such information is necessary for the completion of an investigation or in enforcement activities against an institution that violates the laws and regulations enforced by OCR; (2) such information is required to be disclosed by law; or (3) such information is permitted to be disclosed under the Privacy Act and FERPA, as applicable. Disclosure will only be made as consistent with the Privacy Act, FERPA, and FOIA.

Subject to the restrictions imposed by the Privacy Act, OCR may release certain information about a complaint to the press or general public, including the name of the school or institution; the date a complaint was filed; the type of discrimination included in a complaint; the date a complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Under these circumstances, any information OCR releases to the press or general public will not include the complainant's name, the name of the person on whose behalf the complaint was filed, or personal information about the complainant or the person on whose behalf the complaint was filed, except as noted in the paragraph above. See CPM Section 703.

SECTION 102 DETERMINE WHETHER THE INFORMATION PROVIDED IS SUBJECT TO FURTHER PROCESSING

OCR will determine whether the information provided to OCR is subject to further processing pursuant to OCR's CPM, as follows:

- (a) Not all information that OCR receives is sufficient to constitute a complaint subject to further processing pursuant to OCR's CPM. The following are generally not subject to further processing, but this determination will be made on an individualized basis, as appropriate:
 - i. Anonymous correspondence with OCR;
 - ii. Courtesy copies of correspondence or documentation filed with or otherwise submitted to another person or entity;
 - iii. Inquiries that solely seek advice or information from OCR; or

¹ This manual uses the term "complainant" throughout. The term "complainant" refers to (a) the person who files a complaint; or (b) the person or group injured by the alleged discriminations on whose behalf a complainant files a complaint.

² See 34 C.F.R. Part 105.

³ Contact information should include, for example, mailing address, phone number, or an electronic mail address.

- iv. Allegations that are communicated to OCR only orally and not in writing.
- (b) OCR must have jurisdiction over the subject matter of the allegations. An allegation over which OCR lacks subject matter jurisdiction is not subject to further processing and will be dismissed pursuant to CPM Section 108.

For OCR to establish subject matter jurisdiction, the written information must allege, or OCR must be able to infer from the facts given, an allegation of: (1) discrimination based on race, color, national origin, sex, disability, or age, (2) discrimination in violation of the Boy Scouts of America Equal Access Act of 2001, or (3) retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws and regulations enforced by OCR, or as a result of making a complaint, testifying, or participating in any manner in an OCR proceeding. *See* 34 C.F.R. §§ 100.7(e), 104.61, 106.71, 108.9, 110.34; and 28 C.F.R. § 35.134.

OCR has jurisdiction pursuant to the following statutory and regulatory authorities:

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000d et seq., 34 C.F.R. Part 100.

Under Title VI, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as certain employment complaints, based on race, color, or national origin.⁴ With respect to employment, OCR has jurisdiction if: (1) the alleged discrimination could adversely affect program beneficiaries on the basis of race, color, or national origin, or (2) a primary objective of the federal financial assistance is to provide employment. *See* CPM subsection 701(b) for processing Title VI complaints with respect to proprietary vocational schools. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. *See* CPM subsection 701(c).

- **Title IX of the Education Amendments of 1972**, as amended, 20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106.

Under Title IX, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment complaints, based on sex. For employment complaints, OCR follows procedures consistent with the employment coordinating regulations at 28 C.F.R. Part 42 and 29 C.F.R. Part 1691. *See* CPM subsection 701(c).

- **Section 504 of the Rehabilitation Act of 1973**, as amended, 29 U.S.C. § 794, 34 C.F.R. Part 104.

Under Section 504, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment complaints based on disability. For employment

⁴ This manual uses the term "recipient" throughout. With respect to Title VI, Title IX, Section 504 and the Age Discrimination Act, a recipient is an entity that receives federal financial assistance from the Department. With respect to the Boy Scouts of America Equal Access Act, a recipient is a public elementary or secondary school or local or State educational agency that receives funds made available through the Department. With respect to Title II, the term is intended to include public entities whether or not they receive federal financial assistance. Specifically, the Department of Justice has identified the Department of Education as the designated agency to carry out Title II compliance activities regarding public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry and nursing, and other health-related schools) and public libraries.

complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640. See CPM subsection 701(e).

- **Age Discrimination Act of 1975**, 42 U.S.C. §§ 6101 et seq., 34 C.F.R. Part 110.

Under the Age Discrimination Act, OCR has jurisdiction to investigate complaints involving individuals who allege discrimination in a recipient's program or activity, including applicants, students, and parents. For instructions regarding referral of complaints to the Federal Mediation and Conciliation Service (FMCS) before investigation, see CPM subsection 701(a). OCR does not have jurisdiction over employment under the Age Discrimination Act. See CPM subsection 701(a).

- **Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12131 et seq., 28 C.F.R. Part 35.

Under Title II, OCR has jurisdiction to investigate complaints involving individuals alleging discrimination in a recipient's education program or activity, including applicants, students, and parents, as well as employment complaints based on disability. For employment complaints, OCR follows procedures consistent with the employment coordination regulations at 28 C.F.R. Part 37 and 29 C.F.R. Part 1640, which address coordinating disability employment complaints with the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC). See CPM subsection 701(e).

- **Boy Scouts of America Equal Access Act of 2001**, 20 U.S.C. § 7905, 34 C.F.R. Part 108.

Under the Boy Scouts Act, OCR has jurisdiction to investigate complaints involving the denial of equal access or a fair opportunity to meet to, or discrimination against, any group officially affiliated with the Boy Scouts of America or officially affiliated with any other youth group listed in Title 36 of the United States Code.

- (c) OCR must have personal jurisdiction over the entity alleged to have discriminated. An allegation about an entity over which OCR lacks personal jurisdiction will not be processed further but will be dismissed pursuant to Section 108.

Under Title VI, Title IX, Section 504, and the Age Discrimination Act, OCR has personal jurisdiction over institutions that receive federal financial assistance from the Department and institutions for which OCR has been delegated authority from other federal agencies. Under Title II, OCR has personal jurisdiction over public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry and nursing, and other health-related schools), and public libraries – regardless of whether these institutions receive federal financial assistance. Under the Boy Scouts Act, OCR has personal jurisdiction over public elementary schools, public secondary schools, local educational agencies and State educational agencies that receive funds made available through the Department.

Where appropriate, OCR will refer the written information to the appropriate agency. See CPM Section 701.

- (d) Generally, statistical data alone are not sufficient to warrant opening an investigation but, as part of an individualized determination with regard to the complaint at issue, can serve to support the opening of an investigation when presented in conjunction with other facts and circumstances.

When OCR determines that the written information provided to the Department is not subject to further processing pursuant to CPM Section 102, OCR will notify the sender in writing of its determination.

SECTION 103 ASSIGN A CASE NUMBER AND ESTABLISH A FILE

Once OCR determines pursuant to CPM Section 102 that written information it has received is appropriate for further processing, the information is referred to as a complaint, and OCR will assign a case number to the complaint and establish a file. The case opening date for each complaint is the date on which OCR assigns a case number. The following guidelines will be applied in determining how many case numbers should be assigned:

- When OCR receives written information at or around the same time by the same complainant that raises identical allegations against the same recipient, OCR will assign one case number to the complaints.
- When OCR receives written information alleging discrimination against multiple recipients and OCR has determined, pursuant to CPM Section 102, that the written information is appropriate for further processing, OCR will assign a separate case number to each recipient named. If, during the course of the investigation, OCR determines that other recipients are involved in the alleged acts of discrimination, OCR will assign a separate case number for each such recipient.
- Written information from more than one person against the same recipient that contains different or distinct allegations will be assigned separate case numbers.
- Written information from one or more than one person that raises the same or a similar allegation based on the same operative facts against the same recipient may be assigned one case number when OCR makes this determination prior to the docketing.
- New allegations filed by the same person against the same recipient after OCR has begun to investigate the original complaint are reviewed on a case-by-case basis to determine whether to consolidate the allegations with the existing investigation and dismiss the subsequent complaint under CPM Section 108, or to proceed with a separate investigation of the new allegations.

SECTION 104 ACKNOWLEDGE THE COMPLAINT

OCR will promptly acknowledge, in writing, the receipt of the complaint. OCR will also inform the complainant that the complaint will be evaluated to determine whether OCR will proceed to investigate the allegations and that further communications about complaint processing will be forthcoming. A Consent Form, a Complaint Form, and *OCR Complaint Processing Procedures* are available online at: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

SECTION 105 OBTAIN A CONSENT FORM

When it is necessary to disclose the identity of the complainant to the recipient and witnesses in order to resolve the complaint, OCR will require written consent before proceeding. The complainant will be informed that the complaint will be dismissed if written consent is necessary in order to resolve the complaint and is not received within 20 calendar days of the date that OCR requests the Consent Form from the complainant. The signed Consent Form may be submitted to OCR by mail, fax, electronic mail or in person. If OCR does not receive a signed written Consent Form, and it is necessary in order to resolve the complaint, the complaint will be dismissed and the complainant so informed in writing.

A complainant filing on behalf of or pertaining to another person is responsible for securing any necessary written consent from that individual, including when a parent files for a student over the age of 18 or one who

becomes 18 while the complaint is under investigation or in monitoring. Where the person is a minor (under the age of 18) or a legally incompetent adult, the Consent Form must be signed by that person's parent or legal guardian. Parental or legal guardian consent may not be required for persons under the age of 18 if they are emancipated under state law or in the context of Section 504, whose IDEA rights have transferred under 20 USC § 1415(m), and are therefore considered to have obtained majority. Proof of transfer for IDEA rights, emancipation, incompetence, and/or legal guardianship must be provided if requested by OCR.

SECTION 106 DETERMINE WHETHER THE ALLEGATIONS ARE TIMELY

OCR will take action only with respect to those allegations (except allegations of age discrimination and allegations relating to breach of Facilitated Resolution Between the Parties agreements) that have been filed within 180 calendar days of the date of the alleged discrimination, unless the complainant is granted a waiver under CPM Section 107. With respect to allegations of age discrimination, OCR will take action with respect to those complaint allegations that have been filed within 180 calendar days of the date the complainant first had knowledge of the alleged discrimination. OCR may extend this time limit for age discrimination complaints for good cause shown. See CPM subsection 701(a). With respect to the timeliness requirements for allegations relating to the breach of Facilitated Resolution Between the Parties agreements, see CPM Section 205.

The filing date of a complaint, for the purpose of determining timeliness, is the following:

- The filing date of complaints submitted online or by electronic mail or fax is the date the complaint was received by OCR. The filing date of complaints submitted by mail is the date the complaint is postmarked.
- For Title II complaints referred from DOJ, the filing date is the date the complaint was received by DOJ.

Timely allegations may include those where OCR determines that the complainant has alleged a continuing violation and/or a pattern or practice of discrimination.

SECTION 107 DETERMINE WHETHER A WAIVER SHOULD BE GRANTED

If a complaint allegation⁵ is not filed in a timely manner (see CPM Section 106), where appropriate, OCR will notify the complainant of the opportunity to request a waiver.⁶ OCR may grant a waiver of the 180 calendar day filing requirement for reasons such as:

- (a) The complainant could not reasonably be expected to have known the act was discriminatory within the 180 calendar day period and the complaint allegation was filed within 60 calendar days after the complainant could have become aware of the alleged discrimination (note that a lack of previous awareness of OCR or the civil rights laws and regulations enforced by OCR is not a basis for a waiver).
- (b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180 calendar day period that rendered the complainant physically or mentally incapable of filing a complaint or obtaining assistance so that a complaint could be filed on their behalf, the complainant provides to OCR documentation demonstrating such

⁵ Although the manual refers to "complaints" and "complaint allegations," OCR makes a determination as to each allegation in a complaint. For example, in a single complaint, OCR may decide that it is appropriate to investigate one or more allegations while dismissing another allegation or other allegations. The complainant will be informed of OCR's decision with respect to each allegation.

⁶ OCR's complaint form notifies the complainant of the opportunity to request a waiver of OCR's timeliness requirement.

lack of capacity, and the complaint allegation was filed within 60 calendar days after the incapacitation ended.

- (c) The complainant filed a complaint alleging the same or similar allegation based on the same operative facts within the 180 calendar day period with another federal, state or local civil rights enforcement agency, or federal or state court, and filed a complaint with OCR within 60 calendar days after the other agency completed its processing of the complaint or, in the case of a court, after there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice is considered a decision on the merits.
- (d) The complainant filed, within the 180 calendar day period, an internal grievance with the recipient, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 calendar days after the internal grievance is concluded.
- (e) Unique circumstances generated by OCR's actions adversely affected the complainant.

SECTION 108 DISMISSAL OF ALLEGATIONS

Allegations can be dismissed during the evaluation stage of case processing or after the allegations have been opened for investigation.

As appropriate, in the evaluation stage, OCR will assist the complainant in understanding the information that OCR requires in order to proceed to the investigation of the complainant's allegations. This will include explaining OCR's investigation process and the rights of the complainant under the statutes and regulations enforced by OCR. OCR may also specifically identify the information necessary for OCR to proceed to investigation. OCR staff will provide assistance to complainants who are individuals with disabilities,⁷ individuals of limited English proficiency, or persons whose communication skills are otherwise limited.

As a threshold issue and throughout the processing of the complaint, OCR addresses First Amendment and other Constitutional considerations. See CPM Section 109.

When an allegation is dismissed during the evaluation stage, OCR will issue a letter to the complainant explaining the reason for the decision.⁸ When a complaint allegation is dismissed after the complaint allegation has been opened for investigation, OCR will issue a letter to the complainant and the recipient explaining the reason for the decision. Complainants may elect to refile complaints that were dismissed pursuant to CPM Sections 108(a), (b), (c), (e), (q), (r), or (s) if they have addressed the deficiencies stated by OCR in the dismissal; such refiled complaints will not be dismissed pursuant to CPM Section 108(m).

Where OCR has approved issuance of a final determination under CPM Section 303 with regard to any allegations, OCR will not dismiss the allegations, but will proceed in accordance with CPM Section 303.

OCR will dismiss an allegation, or, if appropriate, the complaint⁷ in its entirety, when:

- (a) The allegation, on its face or as clarified, fails to state a violation of one of the laws or regulations OCR enforces.

⁷ See 34 C.F.R. Part 105.

⁸ In circumstances where the complaint contains an allegation of age discrimination and therefore has been referred to the Federal Mediation and Conciliation Service, OCR will also notify the recipient of the dismissal.

- (b) The allegation, on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, how), or is so speculative, conclusory⁹ or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring.

Before dismissing an allegation under CPM subsection 108(b), OCR will contact the complainant either by telephone or in writing (by letter or via electronic mail) to: (i) explain the information necessary for OCR to open an investigation of the allegation; (ii) request that the information be received within 14 calendar days of the date of the telephone contact, letter, or electronic mail; and (iii) advise the complainant that the allegation will be dismissed if the information is not received by that date. OCR will dismiss the allegation if the requested information is not received within 14 calendar days of the date of the telephonic or written request, unless the complainant has requested additional time to provide the information.

- (c) Based on all of the facts/information provided by the complainant or publicly available information, OCR cannot reasonably conclude that the recipient has violated a law OCR enforces.
- (d) The allegation is not timely filed with OCR pursuant to CPM Section 106 and a waiver was not requested or was requested but not granted pursuant to CPM Section 107.
- (e) OCR determines that a signed Consent Form is required to proceed with an investigation, and the Consent Form has not been provided.
- (f) OCR determines that it lacks jurisdiction over the subject matter of the allegation.
- (g) OCR determines that it lacks personal jurisdiction over the entity alleged to have discriminated. When appropriate, OCR will refer the complaint to the appropriate agency. See CPM Section 701.
- (h) OCR transfers or refers the complaint to another agency for investigation. See CPM Section 701.
- (i) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with another federal, state, or local civil rights enforcement agency⁹ or through a recipient's internal grievance procedures, including due process proceedings, and
 1. OCR anticipates that all allegations will be investigated and that there will be a comparable resolution process pursuant to legal standards that are acceptable to OCR. OCR will advise the complainant that she or he may re-file with OCR within 60 calendar days of the completion of the other entity's action. Generally, OCR will not conduct its own investigation. Instead, OCR reviews the results of the other entity's determination and decides whether the other entity provided a comparable resolution process pursuant to legal standards that are acceptable to OCR;
 - or
 2. OCR determines that all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR.
- (j) The same or a similar allegation based on the same operative facts has been filed either by the complainant or someone other than the complainant against the same recipient with a state or federal court. OCR will advise the complainant that she or he may re-file the complaint with OCR within 60 calendar days following the termination of the court proceeding if there has been no decision on the

⁹ This provision applies where the complaint allegation (including any additional information provided by the complainant) does not provide sufficient information to raise the allegation above the level of speculation. The complaint must provide more than bare conclusions of alleged violations of the laws and regulations enforced by OCR.

merits or settlement of the complaint allegations. A dismissal with prejudice is considered a decision on the merits.

- (k) OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved.
- (l) A class action with the same or a similar allegation with the same operative facts has been filed against the same recipient with a state or federal court. OCR will advise the complainant that she or he may re-file with OCR within 60 calendar days following the termination of the court proceeding if there has been no decision on the merits or settlement of the state or federal complaint. A dismissal with prejudice is considered a decision on the merits.
- (m) The complaint filed by the complainant or someone other than the complainant against the same recipient raises the same or similar allegations based on the same operative facts that were previously dismissed or closed by OCR.
- (n) OCR has recently investigated or is currently investigating the same or similar allegations based on the same operative facts involving the same recipient in a compliance review, directed investigation or OCR complaint.
- (o) The complainant withdraws the allegation or complaint.
- (p) The death of the complainant makes it impossible to investigate the allegations fully.
- (q) OCR determines that its ability to complete its evaluation of the complaint or an investigation is substantially impaired by the complainant's refusal to provide information that is reasonably accessible to the complainant and is necessary for the investigation of the complaint. OCR will include documentation in the case file of its efforts to contact the complainant to request the necessary information and of the complainant's refusal to provide information.
- (r) OCR determines that its ability to complete its evaluation of the complaint or an investigation is substantially impaired by its inability to contact the complainant in order to obtain information that is necessary for investigation of the complaint. OCR will include documentation in the case file of its unsuccessful efforts to contact the complainant to request the necessary information.
- (s) OCR determines that the complaint is moot or unripe.

SECTION 109 FIRST AMENDMENT PRINCIPLES

Although OCR does not have jurisdiction to enforce the First Amendment to the U.S. Constitution, as a threshold issue and throughout the processing of the complaint, OCR interprets its statutes and regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret any statute or regulation to require impinging upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights.

SECTION 110 RAPID RESOLUTION PROCESS

The Rapid Resolution Process (RRP) is an expedited case processing approach that can be used to resolve cases in any of OCR's statutory areas either during the evaluation stage or after issuance of the letter of notification informing the complainant that OCR is opening an investigation. The outcomes in all RRP cases must meet OCR's standards for legal sufficiency and be consistent with applicable statutory and regulatory

authority. Any resolution agreement reached through RRP must be aligned with the allegations in the complaint deemed appropriate for resolution pursuant to RRP. See CPM Article III.

Once OCR has determined that the complaint is appropriate for RRP, OCR will promptly attempt to resolve the complaint and obtain information necessary to make a compliance determination. OCR will contact the recipient to determine if the recipient is interested in immediately resolving or has taken action to resolve the complaint allegations. Where such interest is expressed, RRP may be used to resolve complaints under the following circumstances:

- (a) Where a recipient has already taken action that will resolve the complaint allegations, the complaint may be resolved without an agreement where compliance is verified and does not require monitoring by OCR. Under this circumstance, OCR will issue a dismissal letter pursuant to CPM subsection 108(k).
- (b) Where a recipient has indicated that it is willing to take action in the future to resolve the complaint allegations, or the recipient has already taken action that requires monitoring, upon the recipient's request and OCR's agreement, the complaint may be resolved pursuant to CPM Section 302. Per CPM Section 302(b), the recipient will sign a resolution agreement, the implementation of which OCR will monitor. See CPM Section 304. Under this circumstance, OCR will issue a resolution letter pursuant to CPM subsection 302(c).
- (c) Where OCR obtains sufficient information from the recipient to make a compliance determination pursuant to CPM Section 303, OCR will issue a letter of finding pursuant to CPM subsection 303(a) or OCR will issue a letter of finding and obtain a resolution agreement pursuant to CPM subsection 303(b), the implementation of which OCR will monitor.

For cases in RRP, OCR must ensure expeditious completion in accordance with the applicable statutes, regulations, and case processing procedures

SECTION 111 OPENING THE COMPLAINT ALLEGATIONS FOR INVESTIGATION

When OCR opens a complaint for investigation, it will issue letters of notification to the complainant and the recipient that contain the following information:

- OCR's jurisdiction, with applicable statutory and regulatory citations;
- The allegations to be investigated;¹⁰
- A statement that OCR is a neutral fact-finder and citing the CPM;
- Information about OCR's Facilitated Resolution Between the Parties process, if appropriate;
- A statement that the complainant may have a right to file a private suit in federal court whether or not OCR finds a violation; and
- Contact information for the OCR staff person who will serve as the complainant's and the recipient's primary contact during the investigation and resolution of the complaint.

A copy of "*OCR Case Processing Procedures*" will be included with the letter to the recipient. A copy of the complaint will be provided to the recipient.

¹⁰ Complainants sometimes raise multiple or overlapping allegations that result in OCR investigating one or more issues. Use of the term "allegations" should be read to encompass the term "issues," as appropriate.

ARTICLE II: FACILITATED RESOLUTION BETWEEN THE PARTIES

SECTION 201 ROLES

The Facilitated Resolution Between the Parties (FRBP) process facilitates the resolution of complaints by providing an opportunity for the parties involved to voluntarily resolve the complaint allegations. When OCR determines, on an individualized basis with regard to the complaint at issue, that a complaint is appropriate for FRBP, it shall contact the parties to offer this resolution option.

(a) OCR's Role

- To serve as an impartial, confidential facilitator between the parties;
- To inform the parties of FRBP procedures;
- To establish a constructive tone, and encourage the parties to work expeditiously and in good faith toward a mutually acceptable resolution;
- To review the allegations with the parties and assist both parties in understanding the pertinent legal standards and possible remedies;
- To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution; and
- To offer assistance, as appropriate, with regard to reducing any resolution to writing. When an agreement is reached, the parties will be informed that OCR will issue a closure letter reflecting the resolution of the complaint by agreement of the parties.

(b) Role of the Participants

- Participate in the discussions in good faith;
- Consider offers or suggestions with an open mind and work constructively toward a mutually acceptable resolution; and
- Implement any agreement in good faith.

OCR does not sign, approve, endorse, or monitor any agreement reached between the parties.

SECTION 202 INITIATION AND TERMINATION OF THE FRBP PROCESS

If OCR determines that FRBP is appropriate and the complainant and the recipient are willing to proceed with this resolution option, OCR will designate staff to facilitate an agreement between the recipient and complainant. Staff assigned to conduct FRBP of a complaint shall not be staff assigned to the investigation of that complaint.

An Agreement to Participate in FRBP must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the complainant and recipient. In circumstances where verbal agreement is obtained, the FRBP facilitator shall send a confirmatory letter or electronic mail to the parties.

If a case has been opened for investigation, OCR has the discretion to suspend its investigation for up to 30 calendar days to facilitate an agreement between the parties. If an agreement is not reached, OCR will resume its investigation.

SECTION 203 CONFIDENTIALITY OF THE FRBP PROCESS

A Confidentiality Agreement must be reviewed and signed, verbally agreed to, or agreed to by electronic mail by the FRBP facilitator and the parties to the FRBP (the complainant or complainant's representative and the

recipient or recipient's representative). In circumstances where verbal agreement is obtained, the FRBP facilitator shall send a confirmatory letter or electronic mail to the parties.

In order to maintain the integrity of the FRBP process apart from OCR's investigation, any notes taken during FRBP by the facilitator and/or any records or other documents offered by either party to the facilitator during FRBP will be kept in a separate file and will not be shared with the staff members assigned to investigate the complaint.

SECTION 204 SUCCESSFUL CONCLUSION OF THE FRBP PROCESS

At the conclusion of a successful FRBP, OCR will obtain a copy of either: (1) a statement signed by the complainant that the allegations have been resolved; or (2) a copy of the agreement that was signed by the parties. After a successful FRBP, OCR will send the parties closure letters that specify the allegations that have been resolved, and that other outstanding allegations, if any, will be resolved through the investigation and resolution process. See CPM Article III. A copy of the signed statement from the complainant or the agreement between the parties will be attached to the closure letter.

SECTION 205 BREACH OF FRBP AGREEMENTS

OCR will not monitor or enforce the agreement, but will inform the parties that if a breach occurs, the complainant has the right to file a new complaint; such new complaint is not subject to dismissal pursuant to CPM section 108(m). If a new complaint is filed, OCR will not address the alleged breach of the agreement. To be considered timely, the new complaint must be filed either within 180 calendar days of the date of the original allegations of discrimination, or within 60 calendar days of the date that the complainant obtains notice that a breach occurred, whichever date is later.

SECTION 206 INVESTIGATIVE DETERMINATION WHEN FRBP IS NOT ACHIEVED

OCR will ensure that there will be adequate time for completion of the investigation if FRBP is unsuccessful. Where FRBP is unsuccessful, an investigation will proceed in accordance with applicable law and OCR's case processing procedures.

ARTICLE III: CASE PLANNING, INVESTIGATION AND RESOLUTION

OCR will ensure that the actions it takes in investigations are legally sufficient, supported by evidence, and dispositive of the allegations. OCR can resolve allegations at any point during the course of the investigation, if appropriate. OCR resolution agreements will be drafted to ensure compliance with the civil rights laws and regulations enforced by OCR.

When, during the course of the investigation of a complaint, OCR identifies compliance concerns and/or violations involving issues that were not raised in the complaint, OCR will address any compliance concerns and/or identified violations in the resolution letter or letter of findings and the resolution agreement, or, depending on the nature of the compliance concerns, provide technical assistance or consider the compliance concerns for a possible compliance review or directed investigation. See CPM Sections 401 and 402.

SECTION 301 CASE PLANNING

Case planning will begin as early as possible, will be thorough, and will be conducted throughout the processing of every case to ensure high quality decisions, prompt investigations and the efficient use of OCR resources. Planning decisions will reflect sound legal standards and will be adjusted as necessary to take into

account information obtained during case processing. See CPM Section 702. The scope of OCR's investigation and resolution activities is governed by applicable statutes and regulations.

OCR regional office management and investigative staff are accountable for effective planning and will participate in critical planning decisions commensurate with the nature and complexity of the case to ensure consistent high-quality casework.

The following essential elements of case planning will be addressed in every OCR file (unless inapplicable):

- The allegations;
- OCR's jurisdiction over the subject matter and entity;
- The legal standards, regulatory authority and elements of proof;
- Ensuring that OCR's actions comport with First Amendment principles;
- The scope of the investigation;
- Investigative methods (i.e., what data and/or information are necessary to resolve the case and the means and methods OCR will employ to obtain the relevant data and/or information); and
- The resolution strategy.

The case file will contain documentation that supports the decisions made. Planning documentation should be organized so that it can be readily located in the case file. Case planning should be documented in the Case Planning Document.

These planning activities will ensure accountability for high quality and consistency with OCR standards, and will address:

- Required actions to investigate compliance;
- Dates for completion of specific actions;
- Description of evidence required; and
- All settlement activities.

SECTION 302 RESOLUTION AGREEMENT REACHED DURING AN INVESTIGATION

Allegations under investigation may be resolved at any time when, prior to the point when OCR issues a draft letter of findings under CPM Section 303(b), the recipient expresses an interest in resolving the allegations *and* OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the investigation and will be consistent with applicable regulations.

OCR will inform the recipient that this resolution process is voluntary before proceeding to resolution pursuant to this section. When OCR determines that it is appropriate to resolve the allegations pursuant to CPM Section 302, OCR will notify the complainant of the recipient's interest in resolution.

(a) Statement of the Case

For cases with allegations proposed for resolution under CPM Section 302, OCR will prepare a Statement of the Case. The Statement of the Case sets forth:

- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- An explanation of the pertinent legal standards;
- The allegations investigated;

- Relevant background information; and
- A summary of the investigation and the evidence, and the identified concerns that support the need for the provisions of the agreement.

The Statement of the Case must address all of the allegations proposed for resolution under CPM Section 302.

(b) Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the recipient, OCR and the recipient will have a period of up to 30 calendar days within which to reach final agreement.

During the negotiations period (which may be less than 30 calendar days, at the discretion of OCR), OCR may suspend its investigation of the case. Where a final agreement is not reached by the 30th calendar day, OCR will resume its investigation thereafter. However, negotiations may continue while the investigation resumes. This 30 calendar day period for suspension of the investigation in order to conduct negotiations cannot be restarted.

(c) Resolution Letters

The resolution letter will address all allegations in the case resolved pursuant to CPM Section 302. The letter must include, at a minimum:

- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- A statement of the allegations investigated and a summary of the evidence obtained to date;
- A statement that, when fully implemented, the resolution agreement will address all of the allegations investigated and that OCR will monitor the implementation of the agreement (see CPM Section 304 and CPM Article V); and
- The following statement: "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the Age Discrimination Act, the complainants may file in federal court only after they have exhausted administrative remedies. See CPM subsection 701(a).

OCR will issue a draft resolution letter and a proposed resolution agreement to the recipient. The recipient shall have five calendar days from the date of the issuance of the draft resolution letter to inform OCR of any factual errors contained therein.

If, after due consideration of the recipient's concerns, OCR determines that the draft resolution letter contains factual errors, it will correct the errors, make any other revisions it deems appropriate, and promptly issue a revised final resolution letter. In addition, where appropriate, OCR will modify the proposed resolution agreement to reflect any corrections.

If the recipient does not inform OCR of factual errors within five calendar days from the date of the issuance of the draft resolution letter, OCR will issue a final resolution letter in due course.

Once the recipient signs the resolution agreement, OCR will monitor its implementation until the recipient has fulfilled the terms and obligations of the resolution agreement. Upon completion of the terms and obligations under the agreement, OCR will close the case. See CPM Article V.

SECTION 303 INVESTIGATIVE DETERMINATIONS

At the conclusion of an investigation, OCR will determine, using a preponderance of the evidence standard, whether:

- There is insufficient evidence to support a conclusion of noncompliance, or
- The evidence supports a conclusion of noncompliance.

(a) Insufficient Evidence Determination

When OCR determines that the preponderance of the evidence does not support a conclusion that the recipient failed to comply with applicable statutes and regulations, OCR will issue a letter of findings to the parties explaining the reasons for its decision. See CPM subsection 303(e).

(b) Non-Compliance Determination

When OCR determines that the preponderance of the evidence supports a conclusion that the recipient failed to comply with applicable statutes and regulations, OCR will issue a draft letter of findings and a proposed resolution agreement to the recipient. See CPM subsection 303(e) and Section 304.

The recipient shall have five calendar days from the date of the issuance of the draft letter of findings to inform OCR of any factual errors contained therein.

If, after due consideration of the recipient's concerns, OCR determines that the draft letter of findings contains factual errors, it will correct the errors, make any other revisions it deems appropriate, and promptly issue a revised final letter of findings. In addition, where appropriate, OCR will modify the proposed resolution agreement to reflect any corrections.

If the recipient does not inform OCR of factual errors within five calendar days from the date of the issuance of the draft letter of findings, OCR will issue a final letter of findings in due course.

When OCR determines that it will resolve the allegations pursuant to CPM subsection 303(b) and initiates negotiation of the resolution agreement with the recipient, OCR will notify the complainant that OCR has initiated negotiation of the resolution agreement pursuant to this subsection.

(c) Mixed Determination

A "mixed determination" is appropriate for complaints with multiple allegations, where the allegations will be resolved in different ways (e.g., the investigation has found a violation with regard to some allegations and insufficient evidence with regard to other allegations; the investigation has found a violation with regard to some allegations and there are other allegations that are appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302; or OCR has found insufficient evidence with regard to some allegations and determined that other allegations are appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302). In a "mixed determination" case, where OCR is making a determination pursuant to subsection 303(b), OCR will negotiate a resolution agreement and issue a letter of findings. See CPM subsections 303(e) and 304. In a "mixed determination" case where OCR is not making a determination pursuant to 303(b), but is resolving allegations pursuant to Section 302, OCR will issue a resolution letter pursuant to Section 302(c).

(d) Statement of the Case

OCR will prepare a Statement of the Case for investigative determinations under CPM Section 303. The Statement of the Case sets forth:

- The allegations raised in the complaint;
- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- An explanation of the pertinent legal standards;
- Relevant background information;
- A statement of each allegation investigated and the findings of fact for each, including analysis of the evidence on which the findings are based; and
- Conclusions for each allegation that reference the relevant facts, the applicable regulations, and the appropriate legal standards.

(e) Letter of Findings

For insufficient evidence determinations, OCR will issue a letter of findings that explains the reasons for OCR's decision to both the recipient and the complainant.¹¹ For non-compliance and mixed determinations that include a non-compliance determination, OCR will issue a letter of findings explaining the reasons for its decision to the recipient after engaging in the process set forth in Section 303(b).

Letters of findings will address all allegations opened for investigation. The letter includes, as appropriate:

- A statement of the allegations opened for investigation;
- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- A statement of the findings of fact for each allegation investigated, supported by any necessary explanation and/or analysis of the evidence on which the findings are based;
- Conclusions for each allegation that reference the relevant facts, the applicable regulations and the appropriate legal standards; and
- A statement that: "The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation." For service complaints under the Age Discrimination Act, the complainant may file in federal court only after they have exhausted administrative remedies. See CPM subsection 701(a).

(f) Timeframes and Procedures for Negotiations

From the date that the proposed resolution agreement is shared with the recipient, OCR and the recipient will have a period of up to 90 calendar days within which to reach final agreement.

(g) Negotiation Impasse

OCR may end the 90-calendar day negotiations period if no agreement has been reached by the 90th day. OCR may end the negotiations period at any time prior to the expiration of the 90 calendar day period when it is clear that agreement will not be reached (e.g., the recipient has refused to discuss any resolution; the recipient has indicated a refusal to agree to a key resolution term; the recipient has not responded to a proposed resolution agreement and at least 30 calendar days have passed). At such

¹¹ For recipients operating under federal court order, see CPM Section 704.

time, OCR shall issue an Impasse Letter that informs the recipient that OCR will issue a Letter of Impending Enforcement Action in 10 calendar days if a resolution agreement is not reached within that 10-day period. The letter will include a description of OCR's unsuccessful attempts to resolve the complaint. If the recipient does not enter into a resolution agreement within 10 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures in CPM Section 305 for the issuance of a Letter of Impending Enforcement Action regarding its non-compliance determinations.

In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302 and allegations for which OCR made determinations of non-compliance, OCR shall issue an Impasse Letter of Impending Enforcement Action. If the recipient does not enter into a resolution agreement within 10 calendar days of the date of the issuance of the Impasse Letter, OCR must follow the procedures in CPM Section 305 for the issuance of a Letter of Impending Enforcement Action regarding its non-compliance determinations.

(h) Negotiations Progressing at the End of the 90 Calendar Day Period

If OCR and the recipient negotiate for 90 calendar days and fail to reach final agreement by the 90th day, but negotiations are progressing, OCR shall inform the recipient that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. Negotiations will be considered progressing if the recipient has agreed in principle to the terms and obligations of the agreement, but needs a short period of time within which, for example, to obtain approval of the agreement (e.g., by a board of education or president of a college) and/or the appropriate signature on the agreement; or where the recipient has agreed to most of the terms and obligations of the agreement but requests a short period of additional time to negotiate other terms and obligations. If the recipient does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding its non-compliance determinations pursuant to CPM Section 305.

In the case of a mixed determination, when the negotiations included allegations that were appropriate to resolve prior to the conclusion of the investigation pursuant to CPM Section 302, and allegations for which OCR made determinations of non-compliance, OCR shall inform the recipient that OCR will issue a Letter of Impending Enforcement Action in 30 calendar days if a resolution is not reached within that 30-day period. If the recipient does not enter into a resolution agreement within 30 calendar days, OCR will issue a Letter of Impending Enforcement Action regarding non-compliance determinations pursuant to CPM Section 305.

SECTION 304 CONTENTS OF RESOLUTION AGREEMENTS

The complaint will be considered resolved and the recipient deemed compliant when the recipient, after negotiating with OCR and reaching agreement on its terms and obligations, enters into and fulfills them.

Resolution Agreements:

- Must be signed by a person with authority to bind the recipient; and
- Must include, in the agreement itself or through an exchange of letters or other written communications:
 - Specific acts or steps the recipient will take to resolve compliance concerns and/or violations;
 - Dates for implementing each act or step;
 - Dates for the submission of reports and documentation;

- Where appropriate, language requiring submission of documents and/or other information or actions for OCR's review and approval, and timeframes for their submission;
- Timeframes requiring the recipient to implement what OCR has approved, and language requiring documentation verifying implementation; and
- The following statements of principle:
 - The recipient understands that by signing the resolution agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the resolution agreement. Further, the recipient understands that during the monitoring of the resolution agreement, if necessary, OCR may visit the recipient, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the recipient has fulfilled the terms and obligations of the resolution agreement;
 - Upon the recipient's satisfaction of the terms and obligations of the resolution agreement, OCR will close the case; and
 - The recipient understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of the resolution agreement and/or the applicable statutes and regulations. Before initiating such proceedings, OCR will give the recipient written notice of the alleged breach and 60 calendar days to cure the alleged breach.

SECTION 305 LETTER OF IMPENDING ENFORCEMENT ACTION

When, following the expiration of the 10 calendar day period referenced in CPM subsection 303(g) or the 30 calendar day period referenced in CPM subsection 303(h), the recipient does not enter into a resolution agreement to resolve the identified areas of non-compliance, OCR will prepare a Letter of Impending Enforcement Action, which will include the following:

- A statement of the allegations opened for investigation;
- A statement of OCR's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- A statement of the findings of fact for each allegation investigated supported by any necessary explanation or analysis of the evidence on which the findings are based;
- Conclusions for each allegation that reference the relevant facts, the applicable regulations, and the appropriate legal standards;
- Notice that the Letter of Impending Enforcement Action is not intended and should not be construed to cover any other issue regarding the recipient's compliance;
- Notice of the time limit on OCR's resolution process and the consequence of failure to reach agreement;
- A description of OCR's unsuccessful attempts to resolve the case;
- When a decision is made to defer final approval of any applications by the recipient for additional federal financial assistance or, with respect to the Boy Scouts Act, additional funds made available through the Department over what the recipient is presently receiving, the letter also will provide notice of such possible deferral. A separate deferral letter will be prepared; and
- Title II letters will include the following language: "The complainant may have a right to file a private suit pursuant to Section 203 of the Americans with Disabilities Act, whether or not OCR finds a violation of Title II."

To resolve the case after issuance of the Letter of Impending Enforcement Action, any resolution agreement that the recipient proposes must be approved by OCR.

SECTION 306 REFERRALS FROM THE DEPARTMENT OF JUSTICE AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

When a Title II complaint is referred to OCR by DOJ, OCR will send a copy of the letter resolving the case to DOJ, if requested by DOJ. When a Title II/504 employment discrimination complaint has been dual-filed with the Equal Employment Opportunity Commission (EEOC) and OCR, or when a complaint has been referred to OCR by EEOC, OCR will notify EEOC once the complaint has been resolved. See 28 C.F.R. Part 37 and 29 C.F.R. Part 1640.

SECTION 307 APEALS

OCR affords an opportunity to complainants to appeal determinations based on CPM Section 303(a) and dismissals based on CPM subsection 108(a), (b), (c), (d), (i), or (j). Information about the appeal process is provided to complainants in *OCR Complaint Processing Procedures*, which is enclosed with OCR's letter acknowledging receipt of the complaint. Information is also published at <http://www.ed.gov/about/offices/list/ocr/complaints-how.html>.

OCR will provide notice of the right to appeal in letters setting forth determinations based on CPM Section 303(a) and dismissals based on CPM subsection 108(a), (b), (c), (d), (i), or (j).

An appeal can be filed electronically, by mail, or fax. The complainant must submit a completed online appeal form or written statement of no more than 10 pages (double-spaced, if typed). If submitted by mail, send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via electronic mail, send to OCR@ed.gov. If submitted via fax, send to 202-453-6012. The filing date of an appeal is the date the appeal is postmarked, submitted electronically, or submitted via fax.

In the appeal, the complainant must explain why she or he believes the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how the correction of any errors would change the outcome of the case. Failure to provide this information may result in denial of the appeal.

OCR reviews appeals to determine whether there is a clear error of fact and/or an error in the legal conclusion that changes the outcome of the determination.

All information to support the appeal must be submitted in writing at the time the complainant files the appeal. The complainant may not submit new evidence for consideration on appeal. Instead, if a complainant has new evidence, the complainant should file a new complaint. (Note that complaints must be filed within 180 calendar days of the last act of alleged discrimination or retaliation in order to be considered timely filed with OCR. A waiver of this 180-day timeframe may be requested. See CPM Section 307.)

An appeal must be submitted within 60 calendar days of the date indicated on the letter of finding or the dismissal. A waiver of this 60-day timeframe may be granted where:

- (a) The complainant was unable to submit the appeal within the 60-day timeframe because of incapacitating illness or other incapacitating circumstances during the 60-day timeframe, and the appeal was submitted within 30 calendar days after the period of incapacitation ended; or
- (b) Unique circumstances generated by OCR's actions have adversely affected the complainant's ability to submit a timely appeal.

A request for a waiver may be submitted with the appeal, if the appeal is submitted beyond the 60 calendar day timeline. A request for a waiver can also be filed prior to the expiration of this 60-day timeframe, by electronic mail, fax, or mail. The waiver will be considered by the office reviewing and responding to the appeal.

For appeals of determinations under Section 303(a), OCR will forward a copy of the complainant's online appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the complainant's appeal. Any response to the complainant's appeal must be submitted to OCR within 14 calendar days of the date that OCR forwarded a copy of the complainant's appeal to the recipient.

OCR will issue a written decision on the appeal to the complainant for appeals of determinations under Section 108 and to both parties for appeals of determinations under Section 303(a).

ARTICLE IV: COMPLIANCE REVIEWS AND DIRECTED INVESTIGATIONS

The investigation and resolution options and procedures identified in the CPM will be utilized for compliance reviews and directed investigations, as appropriate. See CPM Articles III, V, and VI. The initiation date for the compliance review or directed investigation is the date of the letter notifying the recipient of the compliance review or directed investigation.

SECTION 401 COMPLIANCE REVIEWS

In addition to the regulations implementing Title VI that govern OCR's investigations, the regulations require OCR to, "from time to time," initiate "periodic compliance reviews" to assess the practices of recipients to determine whether they comply with the Title VI regulations. See 34 C.F.R. § 100.7(a). This regulatory provision is incorporated by reference in the regulations implementing other statutes enforced by OCR. See Title IX (34 C.F.R. § 106.71), Section 504 (34 C.F.R. § 104.61), the Boy Scouts Act (34 C.F.R. § 108.9); the Age Discrimination Act, (34 C.F.R. § 110.30; and Title II (28 C.F.R. § 35.172).

The compliance review regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations.

SECTION 402 DIRECTED INVESTIGATIONS

In appropriate circumstances, OCR may conduct a directed investigation when information indicates a possible failure to comply with the laws and regulations enforced by OCR; the matter warrants attention; and the compliance concern is not otherwise being addressed through OCR's complaint, compliance review, or technical assistance activities. See Title VI, 34 C.F.R. § 100.7(c). This regulatory provision is incorporated by reference in the regulations implementing the other statutes enforced by OCR. See Title IX (34 C.F.R. § 106.71), Section 504 (34 C.F.R. § 104.61), the Boy Scouts Act (34 C.F.R. § 108.9); the Age Discrimination Act (34 C.F.R. § 110.30), and Title II (28 C.F.R. § 35.172).

ARTICLE V: MONITORING RESOLUTION AGREEMENTS

SECTION 501 RESPONDING TO MONITORING REPORTS AND VERIFYING RECIPIENT'S IMPLEMENTATION

OCR will promptly acknowledge its receipt of interim and final monitoring reports. OCR will evaluate each report and issue an appropriate response (i.e., where OCR determines actions taken are sufficient or insufficient under the agreement). OCR must obtain sufficient information to determine whether the recipient complied with the terms and obligations of the resolution agreement. Depending on the nature of the agreement, verification of remedial actions may be accomplished by, for example, the review of reports,

documentation and other information submitted by recipients and knowledgeable persons; interviews of the recipients and knowledgeable persons; or site visits.

SECTION 502 IMPLEMENTATION PROBLEMS

OCR will promptly provide written notice to the recipient of any deficiencies with respect to implementation of the terms and obligations of the agreement and will request appropriate action to address such deficiencies. When OCR has determined that a recipient has failed to comply with the agreement or any of the terms and obligations thereof for reasons that do not justify the modification of the agreement pursuant to CPM subsection 503(a), OCR will take prompt action to enforce the agreement pursuant to CPM Section 305 and CPM Article VI.

SECTION 503 MODIFICATION OF AGREEMENTS

(a) Changed Circumstances Affecting Agreements

OCR may agree to modify (including with respect to deadlines for submitting a report or completing a required action) or terminate a resolution agreement when it learns that circumstances have arisen that substantially change, fully resolve, or render moot some or all of the compliance concerns that were addressed by the resolution agreement. OCR may also modify the agreement in response to changes in controlling case law, statutes, and regulations.

(b) New Compliance Issues

OCR may address new compliance issues identified for the first time during monitoring by providing technical assistance or considering the issues for a possible compliance review or directed investigation. See CPM Sections 401 and 402.

(c) Approval of Modifications

OCR must approve modifications to the agreement (e.g., requests to change the substance of any provision in the agreement, or requests for extension of time to submit a report or to complete a required action). Approved modifications must be set forth in writing and appended to the original agreement. Requests for modification must be documented in the case file. OCR will send the complainant written notification of approved modifications to the substance of the original agreement, where appropriate.

SECTION 504 CONCLUSION OF MONITORING

OCR will conclude the monitoring of a resolution agreement when it determines that the recipient has fully and effectively implemented the terms and obligations of the resolution agreement, including any subsequent approved modifications to the agreement. OCR will promptly send written notification to the recipient, and the complainant where appropriate, of its determination that the terms and obligations of the resolution agreement have been implemented and that OCR is closing the case.

ARTICLE VI: INITIATION OF ENFORCEMENT ACTION

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement, OCR will initiate enforcement action. OCR will either: (1) initiate administrative proceedings to suspend, terminate, or refuse to grant or continue financial assistance from, or, with respect to the Boy Scouts Act, funds made available through, the Department to the recipient; or (2) refer the case to DOJ for judicial proceedings to enforce any rights of the United States under any law of the United States.

SECTION 601 INITIATE ADMINISTRATIVE PROCEEDINGS, WHERE APPROPRIATE

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement and OCR decides, within its discretion, to initiate administrative proceedings, it will request that an administrative proceeding be initiated. In collaboration with other Department personnel as appropriate, OCR will establish a team to prosecute the case. If OCR decides to defer new funds, a Notice of Opportunity for Hearing will be issued within 30 calendar days of the notice of the deferral action. See Section 305.

SECTION 602 REFER TO DOJ, WHERE APPROPRIATE

When post-Letter of Impending Enforcement Action negotiations do not result in a resolution agreement and OCR decides, within its discretion, to refer the matter to DOJ, it will issue a letter to the recipient stating that the case will be referred to DOJ within 10 calendar days of the date of the letter.

SECTION 603 ENFORCEMENT FOR DENIAL OF ACCESS

A recipient denies access to OCR when it:

- Refuses to permit OCR access during the recipient's normal business hours to information maintained by the recipient that is necessary to determine the compliance status of the allegations under investigation or, during monitoring, the recipient's compliance with a resolution agreement. Generally, this includes access to books, records, and accounts, including electronic storage media; retrieval systems and photocopies; and other sources of information, including witnesses and the recipient's facilities;
- Refuses to permit OCR access to its employees during the recipient's regular business hours;
- Fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or
- Refuses to complete applicable Office of Management and Budget-approved compliance and survey forms relevant to an investigation.

Where the recipient has refused to provide OCR with access orally, either in person, over the telephone or through use of other media, OCR must attempt to ascertain the basis for the recipient's refusal and explain OCR's authority to obtain the evidence. Where attempts to persuade the recipient to provide access have failed, OCR must send a letter to the recipient that sets forth in detail the evidence (e.g., documents, data, other information, or witnesses) to which the recipient denied OCR access and specifies the efforts that OCR has made to obtain the evidence. If the recipient does not voluntarily provide OCR with access to the requested evidence within 30 calendar days of OCR's issuance of the letter to recipient, OCR will issue a Letter of Impending Enforcement Action. If the recipient continues to deny OCR access to the requested evidence, OCR will issue a letter to the recipient stating OCR's intention to take enforcement action.

SECTION 604 ENFORCEMENT FOR FAILURE TO COMPLY WITH OCR AGREEMENT

Where the recipient has failed to comply with the terms and obligations of a resolution agreement, OCR will issue a Letter of Impending Enforcement Action pursuant to CPM Section 305. If the recipient does not come into compliance after issuance of the Letter of Impending Enforcement Action, OCR will initiate enforcement action pursuant to either CPM Section 601 or CPM Section 602.

ARTICLE VII: APPENDICES

SECTION 701 SPECIAL INTAKE PROCEDURES

(a) Age Discrimination Complaints

An age discrimination complaint is timely when it is filed within 180 calendar days of the date the complainant first had knowledge of the alleged discrimination. For good cause shown, OCR may extend this time limit.

For service complaints under the Age Discrimination Act, the complainant may file a civil action under the Age Discrimination Act in federal court but only after she or he has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

(1) 180 calendar days have elapsed since the filing of a complaint with OCR and OCR has made no finding, or (2) OCR issues a finding in favor of the recipient. If OCR fails to make a finding within 180 calendar days or issues a finding in favor of the recipient, OCR will promptly notify the complainant of this fact and of her or his right to bring a civil action for injunctive relief. OCR's notice must also contain the following information: (1) that a civil action can be brought only in a United States district court for the district in which the recipient is located or transacts business; (2) that a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court; (3) that before commencing the action, the complainant shall give 30 calendar days' notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient; (4) that the notice shall state the alleged violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and (5) that the complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

1. Employment Complaints

OCR does not have jurisdiction over employment complaints under the Age Discrimination Act. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OCR complaint is dismissed. Employment complaints filed by persons under 40 are not within the jurisdiction of EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Age Discrimination Act. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and also contains allegations of discrimination in services within the jurisdiction of OCR, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OCR age employment case being dismissed, and OCR proceeds with the complaint based on allegations of discrimination in services.

2. Service Complaints

All complete and timely complaints (see 34 C.F.R. §§ 110.31 and 110.32) containing an allegation of age discrimination in services are promptly referred to the following address or the appropriate regional office by electronic mail or mail:

Federal Mediation and Conciliation Service
Attention: Alternative Dispute Resolution Department
250 E. Street SW
Washington, D.C. 20427

Where OCR receives a complaint containing both allegations of age discrimination in services and allegations under Title VI, Title IX, Title II, Section 504, and/or the Boy Scouts Act, and OCR determines that the non-age allegation is independent and separable from the age allegation, OCR will refer only the age portion of the complaint to FMCS. OCR will proceed to investigate the additional allegations over which OCR has jurisdiction. OCR will not wait for mediation of the age portion of the complaint to conclude before beginning investigation of the non-age portion of the complaint.

Copies of the complaint and letters to the complainant and recipient and a completed FMCS “Request for ADA Mediation Assistance” must be included.

If FMCS does not resolve the complaint within 60 calendar days from the date of filing with OCR, OCR will resume processing the age aspects of the complaint. The date that the complaint or any portion of a complaint is sent to FMCS shall be entered in CMS. The date that the complaint is referred back from FMCS shall also be entered in CMS. FMCS’s processing time will, therefore, not be included in OCR’s case processing time.

(b) Title VI Complaints against Proprietary Schools

Authority to process Title VI complaints against proprietary vocational schools (privately owned, profit-making enterprises that teach a trade or skill) has, with certain exceptions, been delegated to the U.S. Department of Veterans Affairs. Such complaints must be forwarded to:

U.S. Department of Veterans Affairs
Office of Resolution Management
810 Vermont Avenue, N.W.
Washington, D.C. 20420

OCR must refer to the U.S. Department of Health and Human Services Title VI complaints filed against a proprietary school operated by a hospital. The complaint is then dismissed. The complainant must be notified of the referral.

The following exceptions apply.

- OCR remains responsible for enforcement of Title VI where a proprietary vocational school is operated by a college or university. See 38 C.F.R. § 18a.1(a).
- OCR remains responsible for enforcement of Title VI where a proprietary vocational school offers non-degree courses for which credit is given and which, on transfer, would be accepted toward a baccalaureate or higher degree by a degree-granting institution. See 38 C.F.R. § 18a.1(b).

(c) Title VI and Title IX Employment Complaints (see 29 C.F.R. §§ 1691.1 – 1691.13 and 28 C.F.R. §§ 42.601 – 42.613)

Race, color, national origin, and sex discrimination in employment complaints will be processed in accordance with the government-wide regulations. OCR will:

1. Within 10 calendar days of receipt, notify the complainant and the recipient that OCR has received the complaint, including the date, place and circumstances of the alleged unlawful employment practice.

2. Within 30 calendar days of receipt:

- i. Determine whether OCR has jurisdiction over the complaint under Title VI and/or Title IX.
- ii. Determine whether EEOC may have jurisdiction over the complaint.
- iii. Transfer to EEOC all complaints over which OCR does not have jurisdiction but over which EEOC may have jurisdiction and notify the complainant and the recipient of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will be deemed the date it was received by EEOC.
- iv. Refer to EEOC certain complaints over which both OCR and EEOC appear to have jurisdiction (“joint complaints”), consistent with the following guidance:

Absent special circumstances, OCR will refer a joint complaint that solely alleges employment discrimination against an individual.

Absent special circumstances, OCR will not refer a joint complaint alleging a pattern or practice of employment discrimination.

Absent special circumstances, OCR will not refer a joint complaint that alleges discrimination in employment and includes allegations regarding other practices of a recipient. If, because of special circumstances, the employment allegations of such a complaint are referred to EEOC, OCR will assign a new case number to the allegations that are retained.

OCR will notify the complainant and recipient of the action taken on the joint complaint. In the case of a referral to EEOC, the notice will include the location of the EEOC office to which the complaint was referred, the civil rights provisions involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC.

For those joint complaints retained for OCR investigation, OCR will contact EEOC to ensure that, in the event EEOC has also received the complaint, EEOC defers its investigation.

(d) Title II ADA Complaints (Other than Employment) (see 28 C.F.R. § 35.171(a)(2)(i))

OCR has jurisdiction to investigate Title II complaints against public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. When OCR receives an ADA-only complaint over which it does not have jurisdiction, it will be referred to DOJ and then dismissed. The complainant will be notified of the referral.

(e) Section 504 and Title II Disability Employment Complaints (see 28 C.F.R. Part 37 and 29 C.F.R. Part 1640)

1. Referral or Deferral

- i. Disability employment complaints shall be referred to the DOJ Civil Rights Division if OCR has no jurisdiction under either Title II of the ADA or Section 504 of the Rehabilitation Act of 1973, and EEOC does not have jurisdiction under Title I (*i.e.*, the recipient has fewer than 15 employees). If EEOC has jurisdiction under Title I

(i.e., the recipient has 15 or more employees), the complaint shall be referred to EEOC.

- ii. OCR shall defer individual complaints unless the complainant elects to have OCR process the charge. OCR must notify the complainant in writing that he or she may choose whether to have OCR or EEOC process the complaint and that if the complainant would like OCR to process the complaint, OCR must receive such written request within 20 calendar days of the date of the letter. See 28 C.F.R. § 37.8(a)(1). If special circumstances make deferral inappropriate, OCR and the appropriate agency may jointly determine to reallocate investigation responsibilities. See 28 C.F.R. § 37.8(e).

2. Retention

- i. When OCR has jurisdiction over a disability employment complaint under Section 504, OCR shall retain the complaint if:
 - EEOC does not have jurisdiction under Title I (i.e., if fewer than 15 employees);
 - EEOC has jurisdiction, but the complainant elects to have OCR process the complaint;
 - The complaint alleges discrimination in both employment and other practices or services covered by Section 504; or
 - The complaint alleges a pattern or practice of employment discrimination. See 28 C.F.R. § 37.6(d)(1).
- ii. When OCR has jurisdiction under Title II of the ADA but not under Section 504, OCR shall retain jurisdiction over a complaint when it determines that EEOC does not have jurisdiction under Title I. See 28 C.F.R. §§ 37.6(d)(2) and (3).

SECTION 702 DATA COLLECTION AND INFORMATION GATHERING

(a) Generally

OCR's data collection and information gathering activities will vary from case to case depending on applicable legal standards, investigative strategies, and the extent to which relevant data/information are in the control of the recipient or others. Some general investigative principles and practices include:

- Obtain independent written documentation to corroborate oral statements;
- Label all evidence, documents, electronic media, and written records of contact with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document);
- Document efforts to obtain access to recipient data and witnesses;
- Undertake a robust outreach to the recipient community to increase access to relevant information in the conduct of an investigation (e.g., by publicizing OCR's presence and availability in onsite investigations for individual interviews and focus groups as well as OCR's availability for discussion with interested individuals before and subsequent to the onsite), as appropriate; and
- Collect data resulting from any methods that OCR or recipients use to track and evaluate compliance with their legal responsibilities (e.g., data from OCR's Civil Rights Data Collection, recipient public websites, climate surveys, and other self-assessment tools).

(b) OCR's Authority to Obtain Information

OCR has the right of access during a recipient's regular business hours to the recipient's facilities and to information maintained by the recipient that is necessary to determine compliance status on those issues under investigation. See 34 C.F.R. § 100.6(c), 34 C.F.R. § 99.31(a)(3)(iii) and 34 C.F.R. § 110.22. Generally, this includes access to such of the recipient's books, records, accounts, including electronic storage media, microfilming, retrieval systems and photocopies maintained by the recipient, and other sources of information, including witnesses, and its facilities, as may be relevant, in OCR's judgment, to ascertain compliance.

(c) Requests for Records

1. Data Requests

A data request seeks information from the recipient relevant to the investigation. It can be used to initiate information collection or to request further information, as necessary.

2. Timeframes for Recipient's Response

The recipient will be given an appropriate amount of time to submit the information required, which shall be determined on the basis of the nature and extent of OCR's data request. This timeframe is established in OCR's discretion, considering factors such as the feasibility of complying with the request in the determined time period.

3. Data Provided by Recipient

A recipient must submit information as necessary for OCR's compliance activities. However, other federal regulations and policies may restrict OCR's information requests:

- i. For example, in the context of an ongoing complaint, compliance review, or directed investigation, OCR may require recipients to record information in such form and containing such information as OCR may determine is necessary to assess compliance, without obtaining prior approval for its use by the Office of Management and Budget.¹² See 34 C.F.R. § 100.6(b).
- ii. OCR must consider federal policies concerning paperwork burdens when requesting that a recipient do more than provide OCR access to normally maintained information. Requests that a recipient generate, aggregate, or compile information to meet an OCR need must be reasonable and may not be unduly burdensome.. Recipients that maintain data in an electronic format must provide the data in that format to OCR in a file type that can be accessed by OCR. Recipients that do not maintain data in an electronic format are encouraged to provide the requested information in an electronic format that can be accessed by OCR.

If a recipient invites OCR to come onsite and collect the requested information, including the interview of witnesses and provides OCR with sufficient access to files, records, logs, and appropriate indexes for OCR to obtain the needed information, then the recipient shall be deemed to have provided OCR with the requisite access necessary to satisfy this provision.

¹² The Paperwork Reduction Act only applies to collections directed at ten or more respondents, with one important exception. Any information requirement in a "rule of general applicability" is presumed to affect or potentially affect at least ten respondents.

4. Confidentiality

OCR has the right of access to a recipient's records, even if those records identify individuals by name. To protect the confidential nature of the records, OCR may, for example, permit the recipient to replace names with a code, and to retain a key to the code. However, OCR should inform the recipient that if at any time, such a procedure impedes the timely investigation of the case, OCR shall have access to the unmodified records. See 20 U.S.C. §§ 1232g(b)(1)(C)(i)(II) and (b)(3) and 34 C.F.R. §§ 99.31(a)(3)(iii) and 99.35 regarding the applicable provisions of the Family Educational Rights and Privacy Act.

(d) Interviews

1. Introduction

Interviews are an integral part of investigations. The objective of interviews is to gain an understanding of the records and data relevant to the issues in the case; to obtain information from and assess the credibility of witnesses; and to evaluate recipient defenses. OCR may conduct individual interviews and focus groups, as appropriate, as part of its investigations. OCR will make efforts to work with recipients to conduct interviews in a manner that minimizes disruptions to the recipient's educational environment.

2. Notice

Prior to initiating an interview, OCR will inform the witness of the following.

- i. The general purpose of the interview, including OCR's role, what law or laws may be pertinent to the investigation, and where appropriate, a brief explanation of what is under investigation.
- ii. The approximate maximum amount of time that the interview may take.
- iii. The potential uses of the information to be obtained from the witness and the Freedom of Information Act. A witness who wants a more thorough explanation should be given a copy of the "OCR Notice of Witness Rights." This Notice is available at: (<https://www2.ed.gov/about/offices/list/ocr/docs/witness-notice-mw.pdf>).
- iv. The witness's right to personal representation during the interview by a person of his or her choice.
- v. When the witness is an employee of a recipient, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.
- vi. The regulatory provisions concerning prohibition of intimidating or retaliatory acts by a recipient.
- vii. In most cases, the recipient's counsel will be allowed to be present during upper level management interviews.

3. Privacy

The privacy interests of witnesses will be considered in selecting the conditions and means employed by OCR to conduct witness interviews. An interpreter may be used when safeguards are taken to ensure the competence of the interpreter and to protect the witness's privacy.

4. Interviews with Minors (Persons under 18) or Legally Incompetent Individuals

OCR shall obtain written consent from a parent or guardian prior to conducting an interview of any person under 18 years of age or otherwise adjudicated legally incompetent, for example, mentally impaired. Parental or legal guardian consent may not be required for persons under 18 if they are emancipated under state law or in the context of Section 504, whose IDEA rights have transferred under 20 U.S.C. § 1415(m), and are therefore considered to have obtained majority. For persons under 18 who state they are emancipated or whose IDEA rights have transferred, OCR should obtain proof of emancipation or proof of transfer of IDEA rights.

Parental or legal guardian consent may not be necessary where the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student. Where a recipient refuses to allow minor students to be interviewed without consent where the questions asked are of a general nature, not related to any specific events in which the minor was involved, and there are no records kept to identify the student, written consent must be obtained.

Where parents or guardians refuse to provide consent for an interview, and OCR determines that the child's information is critical, OCR may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. Where consent is denied, OCR will not interview the child.

5. Records of Interviews

A written record of interviews (i.e., in-person, telephonic, or through use of other electronic media) must be kept. Interviewers will notify interviewees when recording is used and recording will be done only with the consent of the interviewee. When interviewers record interviews, the recording becomes part of the case record along with the written record. Regardless of the technique used during the interview, a written record of the interview must be created.

The record of the interview to be placed in the case file must contain the following information.

- i. The case identification (name and case number).
- ii. The name and identification of the interviewee, interviewer, and any other person present (include an explanation for the presence of any other persons).
- iii. The date, time, and location of interview (including whether the interview was conducted in person or through use of media (e.g., telephone, videoconferencing)).
- iv. A record of whether the interviewee was informed of required notifications.
- v. A written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).

SECTION 703 FREEDOM OF INFORMATION ACT AND PRIVACY ACT

The information OCR collects is analyzed by authorized personnel within the agency and is used only for authorized civil rights compliance and enforcement activities. In order to resolve a complaint OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such information could include the name, the age or physical condition of a complainant. The Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a, governs the maintenance of records contained in a system of records, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, establishes a public right of access (with certain exemptions) to OCR's records.

The Privacy Act regulates the collection, maintenance, use, and dissemination of certain personal information in records contained in a federal agency's system of records. OCR's investigation files have been exempted from certain provisions of the Privacy Act, including, but not limited to, provisions that provide individuals with notification of, access to, and correction or amendment of records maintained on them. See 34 C.F.R. § 5b.11(c)(2)(ii). The Department has published in the Federal Register a Privacy Act system of records notice entitled "Complaint Files and Log" (18-08-01). Third parties may not gain access to records about individuals within a system of records without the prior written consent of the subject individual except as required by FOIA or pursuant to other statutory exceptions contained in the Privacy Act. See 5 U.S.C. § 552a(b).

The FOIA gives the public a right of access to records of federal agencies. The FOIA is implemented by Department regulations. See 34 C.F.R. Part 5.

Although each FOIA request will be reviewed on a case-by-case basis, generally, OCR is not required to release documents, or portions thereof, during the case resolution and investigation process or enforcement proceedings if the release could reasonably be expected to interfere with OCR's law enforcement activities. See 5 U.S.C. § 552(b)(7)(A). Also, a federal agency is not required to release inter- or intra-agency records, or portions thereof, if they are pre-decisional, deliberative documents, or if the records would otherwise be subject to certain privileges in litigation. See 5 U.S.C. § 552(b)(5). Further, a federal agency may not release documents, or portions thereof, that constitute commercial or financial information, obtained from a submitter, that is privileged or confidential. See 5 U.S.C. § 552(b)(4). Finally, a federal agency may not release documents, or portions thereof, if their release would or could result in an unwarranted invasion of privacy of an individual. See 5 U.S.C. §§ 552(b)(6) and (7)(C). Disclosure will only be made as consistent with the Privacy Act and FERPA. OCR will only reveal the name or identifying information about an individual if such disclosure is consistent with the Privacy Act and FERPA.

In addition, OCR can release certain information about the complaint to the press or general public, including the name of the school or institution; the date the complaint was filed; the type of discrimination included in the complaint; the date the complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; and other related information. Any information OCR releases to the press or general public will not include the complainant's name or the name of the person on whose behalf the complaint was filed, except as noted in the paragraph above.

SECTION 704 RECIPIENTS OPERATING UNDER FEDERAL COURT ORDER

(a) When the United States is a Party to the Court Order

When OCR receives a complaint alleging discrimination by a recipient against which the DOJ represents the United States as a party in pending litigation, the following procedures will apply:

1. **OCR notification to DOJ:** OCR will forward the complaint to DOJ by electronic mail immediately and ask whether DOJ wants OCR to refer the complaint to DOJ. This will occur before any OCR evaluation of the complaint begins and even if it is clear on the face of the complaint that OCR would not open it for investigation.
2. **DOJ response:** DOJ will have seven calendar days after the date of OCR's electronic mail notification to determine whether: (1) DOJ wants OCR to refer the complaint to DOJ; or (2) DOJ does not want OCR to refer the complaint to DOJ. There are no additional options. For example, a complaint cannot be conditionally referred or conditionally declined, nor may DOJ request referral of only a portion of a complaint.

3. **No referral to DOJ:** When DOJ indicates that it does not want OCR to refer the complaint, or DOJ does not respond within seven calendar days of the date of OCR's electronic mail notification, OCR, in its sole authority, will immediately process the complaint.
4. **Referral to DOJ:** When DOJ indicates that it wants OCR to refer the complaint, then:
 - i. OCR will refer the entire complaint to DOJ;
 - ii. OCR will dismiss the complaint and notify the complainant that the complaint has been referred to DOJ; and
 - iii. Once the complaint is referred to DOJ, DOJ will be responsible for investigating and resolving the entire complaint. OCR will forward all communications it receives from the complainant relating to the complaint to DOJ and DOJ will be responsible for addressing all such communications. OCR will not accept any type of return or re-referral of the complaint from DOJ.

(b) When the United States is Not a Party to the Court Order

As part of evaluation of the complaint, OCR will consult with parties about the current status of the court order.

OCR COMPLAINT PROCESSING PROCEDURES

LAWS ENFORCED BY OCR

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

EVALUATION

OCR evaluates the written information that it receives to determine whether it constitutes a complaint that is subject to further processing. If so, OCR determines whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the date of the alleged discrimination.¹ If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 14 calendar days within which to respond to OCR's request for information.

Bases for OCR's dismissal of a complaint include:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely and a waiver will not be granted;
- The complaint is speculative, conclusory, or incoherent, or lacks sufficient detail to infer discrimination and the complainant does not provide the information that OCR requests within 14 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;

¹ Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR or, if still pending, OCR anticipates that there will be a comparable resolution process pursuant to legal standards that are acceptable to OCR;
- The same or similar allegations based on the same operative facts has been filed by the complainant against the same recipient in state or Federal court;
- The complaint is a continuation of a pattern of complaints against multiple recipients that places an unreasonable burden on OCR's resources.

OPENING THE COMPLAINT FOR INVESTIGATION

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

INVESTIGATION OF THE COMPLAINT

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient

have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 10 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Impending Enforcement Action to the parties providing a factual and legal basis for a finding of noncompliance.

If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION

Facilitated Resolution Between the Parties (FRBP):

Facilitated Resolution between the Parties allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that FRBP is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. Staff assigned by OCR to conduct FRBP will not be the staff assigned to the investigation of the complaint.

OCR does not approve, sign or endorse any agreement reached between the parties as a result of FRBP, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

Resolution Agreement Reached During an Investigation

A complaint may also be resolved before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, OCR will attempt to negotiate an agreement with the recipient. OCR will notify the complainant of the recipient's request. A resolution agreement reached before the conclusion of an investigation will be monitored by OCR.

ADDITIONAL INFORMATION

Right to File a Separate Court Action

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

- 1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no findings; or
- 2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

Prohibition against Intimidation or Retaliation

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

Investigatory Use of Personal Information

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint investigation and resolution process. However, if OCR is unable to obtain the information necessary to investigate a complaint, we may have to close the complaint.

The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. §552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act of 1974 protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the government that are retrieved by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use and dissemination of certain personal information in the files of Federal agencies.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used by the government only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include the name, age, or physical condition of the person who is the alleged subject of discrimination. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information about a complainant to any other agency or individual except in the one of the 11 instances defined in the Department's regulation at 34 C.F.R. § 5b.9(b).

OCR does not reveal the name or other identifying information about an individual (including individuals who file complaints or speak to OCR) unless (1) such information would assist in the completion of an investigation or for in enforcement activities against an institution that violates the laws, or; (2) unless such information is required to be disclosed under the FOIA or the Privacy Act. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy

Act or otherwise by law; or (3) information is permitted to be disclosed under both FOIA and the Privacy Act and OCR determines disclosure would further an interest of the Department and the United States.

However, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint except as noted in the paragraph above.

FOIA gives the public the right of access to records and files of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. Generally, OCR is not required to release documents during the case evaluation and investigation process or enforcement proceedings, if the release could reasonably be expected to interfere with or affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a Federal agency may refuse a request for records if their release would or could reasonably be expected to result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.



**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item twelve of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:

Last Name: SMITH First Name: BRIAN Middle Name: A

Address: 12746 PARKBURY DRIVE

City: ORLANDO State: FL Zip Code: 32828

Home Telephone: 407.457.2800 Work Telephone: _____

E-mail Address: briansmithdc@aol.com

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: Gov. DeSantis, State of Florida
Address: 400 SOUTH MONROE STREET
City: TALLAHASSEE State: FL Zip Code: 32399
Department/School: FL Dept of Education

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐

Discrimination **based on race (specify)**

☐

Discrimination **based on color (specify)**

☐

Discrimination **based on national origin (specify)**

[Copy of SB1834 attached]

☒

Discrimination **based on sex (specify)**

This is a proactive complaint in that the passage of SB1834: "A school district may not encourage classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate or developmentally appropriate for students"

☐

Discrimination **based on disability (specify)**

☐

Discrimination **based on age (specify)**

☐

Retaliation because you filed a complaint or asserted your rights (specify)

☐

Violation of the Boy Scouts of America Equal Access Act (specify)

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

Passage of this is a clear violation of Federal Law and as a result all Federal funding for the State of Florida Department of Education should be withheld if this bill is enacted this week. The President has been quite vociferous in his denouncing of this piece of hate-legislation.

PLEASE FORWARD TO THE CORRECT AGENCY WHO HAS THE AUTHORITY TO SUSPEND FEDERAL FUNDS GOING TO THE STATE OF FLORIDA. - THANK YOU.

6. What is the most **recent date** you were discriminated against?

Date: not applicable

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

☐

I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

☒

YES

☐

NO

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

Congressional hearings have not been equitable.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____

Case Number or Reference: _____

Results of Investigation/Findings by Agency or Court:

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10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Last Name: REINBECK First Name: RANDOLPH Middle Name: T
Home Telephone: 407.285.8509 Work Telephone: _____

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Be informed of the consequences of passing this legislation.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

02/09/2022

(Date)



(Signature)

(Date)

(Signature of person in Item 2)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

CONSENT FORM - FOR REVEALING NAME AND PERSONAL INFORMATION TO OTHERS

(Please print or type except for signature line)

Your Name: DR. BRIAN A SMITH

Name of School or Other Institution That You Have Filed This Complaint Against: _____

FLORIDA DEPARTMENT OF EDUCATION

- This form asks whether the Office for Civil Rights (OCR) may share your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.
- For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.
- If OCR is not allowed to reveal your name or personal information as described above, OCR may decide to close your complaint if OCR determines it is necessary to disclose your name or personal information in order to resolve whether the school discriminated against you.

NOTE: If you file a complaint with OCR, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint.

NOTE: OCR requires you to respond to its requests for information. Failure to cooperate with OCR's investigation and resolution activities could result in the closure of your complaint.

Please sign section A or section B (but not both) and return to OCR:

- If you filed the complaint on behalf of yourself, you should sign this form.
 - If you filed the complaint on behalf of another specific person, that other person should sign this form.
- EXCEPTION:** If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.
- If you filed the complaint on behalf of a class of people, rather than any specific person, you should sign the form.

A. **I give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others to further OCR's investigation and enforcement activities.**


Signature

02/09/2022
Date

OR

B. **I do not give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others.** I understand that OCR may have to close my complaint.

Signature

Date

I declare under penalty of perjury that it is true and correct that I am the person named above; and, if the complaint is filed on behalf of a minor child/ward, that I am that person's parent or legal guardian. This declaration only applies to the identity of the persons and does not extend to any of the claims filed in the complaint.

By Senator Baxley

12-01508B-22

20221834__

A bill to be entitled

An act relating to parental rights in education; amending s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that require school district personnel to withhold from a parent specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; providing an exception; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; prohibiting a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a specified manner; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and

12-01508B-22

20221834__

30 court costs to certain parents; requiring certain
31 training developed or provided by a school district to
32 adhere to standards established by the Department of
33 Education; requiring the department to review and
34 update, as necessary, specified materials by a certain
35 date; providing an effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Paragraph (c) is added to subsection (8) of
40 section 1001.42, Florida Statutes, to read:

41 1001.42 Powers and duties of district school board.—The
42 district school board, acting as a board, shall exercise all
43 powers and perform all duties listed below:

44 (8) STUDENT WELFARE.—

45 (c)1. In accordance with the rights of parents enumerated
46 in ss. 1002.20 and 1014.04, adopt procedures for notifying a
47 student's parent if there is a change in the student's services
48 or monitoring related to the student's mental, emotional, or
49 physical health or well-being and the school's ability to
50 provide a safe and supportive learning environment for the
51 student. The procedures must reinforce the fundamental right of
52 parents to make decisions regarding the upbringing and control
53 of their children by requiring school district personnel to
54 encourage a student to discuss issues relating to his or her
55 well-being with his or her parent or to seek permission to
56 discuss or facilitate discussion of the issue with the parent.
57 The procedures must comply with s. 1002.22(2) and may not
58 prohibit a parent from accessing any of his or her minor child's

12-01508B-22

20221834__

education records created, maintained, or used by the school district. This paragraph does not limit or alter any obligation of school district personnel to report suspected abuse, abandonment, or neglect, as those terms are defined in s. 39.01.

2. A school district may not adopt procedures or student support forms that require school district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information, unless a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect, as those terms are defined in s. 39.01. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

3. A school district may not encourage classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate or developmentally appropriate for students.

4. A parent of a student may bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates this paragraph and seek injunctive relief. A court may award damages and shall award reasonable attorney fees and court costs to a parent who receives declaratory or injunctive relief.

5. Student support services training developed or provided by a school district to school district personnel must adhere to student services guidelines, standards, and frameworks

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20221834__

88 established by the Department of Education.

89 Section 2. By June 30, 2023, the Department of Education
90 shall review and update, as necessary, school counseling
91 frameworks and standards; educator practices and professional
92 conduct principles; and any other student services personnel
93 guidelines, standards, or frameworks in accordance with the
94 requirements of this act.

95 Section 3. This act shall take effect July 1, 2022.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

February 14, 2022

Dr. Brian Smith
12746 Parkbury Drive
Orlando, FL 32828
VIA EMAIL: briansmithdc@aol.com

OCR COMPLAINT NUMBER: #04-22-4023

Dear Dr. Smith:

The purpose of this letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR), Region IV (Atlanta), has received the signed complaint submitted by you Dr. Smith, on February 11, 2022. We are currently evaluating this complaint to determine whether OCR has the authority to investigate the allegation(s).

Attached is a copy of “**OCR’s Complaint Processing Procedures**” which provides a brief overview of the laws OCR enforces and explains the various stages of the intake, evaluation, investigative and resolution process. It also describes three additional pieces of information including: (1) your right to file a separate lawsuit in federal court; (2) the prohibition against intimidation or retaliation by institutions under the U.S. Department of Education’s jurisdiction; and (3) the collection and use of personal information during an investigation.

Finally, a member of OCR’s staff will contact you by letter, telephone or email shortly to discuss the complaint. However, if you need to contact this office beforehand, you may do so by calling (404) 974-9406 Monday through Friday between the hours of 8:30am and 4:30pm or via email at OCR.Atlanta@ed.gov. OCR will refer your call to the team that has been assigned to your complaint. Please ensure you have the above complaint number available for your communications with OCR and your team.

Thank you for providing us with the signed consent form which is required for OCR to investigate and achieve a potential resolution of this complaint.

Sincerely,

Administrative Team



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV

ALABAMA
FLORIDA
GEORGIA
TENNESSEE

March 3, 2022

VIA EMAIL ONLY

briansmithdc@aol.com

Dr. Brian A. Smith
12746 Parkbury Drive
Orlando, Florida 32828

Re: OCR Complaint No. 04-22-4023

Dear Dr. Smith:

On February 11, 2022, the U.S. Department of Education, Office for Civil Rights (OCR) received your complaint against the Florida Department of Education. You allege that a proposed Florida law, Senate Bill 1834 (SB1834), is discriminatory based on sex. After carefully reviewing the information you provided and publicly available information, OCR is dismissing your complaint for the reasons explained below.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department of Education, the Florida Department of Education is subject to Title IX and to OCR's jurisdiction.

Section 108(s) of OCR's *Case Processing Manual* states, in relevant part, that OCR will dismiss a complaint when OCR determines the allegation is unripe.

In the complaint you filed with OCR, you state that your complaint is proactive, and in describing the discriminatory act you cite anticipated passage of the bill as a violation of the law. You also request that all federal funding be withheld from the Florida Department of Education if the bill is enacted.

According to the Florida Senate's website, SB1834 is a bill still under consideration.¹ Therefore, the allegation is unripe and OCR is dismissing the complaint under Section 108(s) of OCR's *Case Processing Manual*.

¹ See <https://www.flsenate.gov/Session/Bill/2022/1834/?Tab=BillHistory> (Last accessed March 1, 2022.)

Please note that if SB1834 is passed into law, you may refile your complaint with OCR. For more information on our complaint processing procedures, you may access OCR's *Case Processing Manual* at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR would also like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR did not notify the Florida Department of Education of your complaint. Nevertheless, please be advised that the recipient must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file another complaint alleging such treatment.

This concludes OCR's consideration of your complaint. If you have any questions, please contact Lorraine Irier, the OCR attorney assigned to this complaint, at 404-974-9349 or lorraine.rier@ed.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ebony Calloway".

Ebony Calloway
Compliance Team Leader



**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item twelve of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:

Last Name: SMITH First Name: BRIAN Middle Name: A

Address: 12746 PARKBURY DRIVE

City: ORLANDO State: FL Zip Code: 32828

Home Telephone: 407.457.2800 Work Telephone: _____

E-mail Address: briansmithdc@aol.com

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. If the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf, the signature of the child's parent or legal guardian is required.

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

3. OCR investigates discrimination complaints against institutions and agencies which receive funds from the U.S. Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: State of Florida Board of Education

Address: 325 West Gaines Street

City: TALLAHASSEE State: FL Zip Code: 32399

Department/School: Richard Corcoran, Commissioner

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐

Discrimination **based on race (specify)**

☐

Discrimination **based on color (specify)**

☐

Discrimination **based on national origin (specify)**

☒

Discrimination **based on sex (specify)**

Florde recently enacted HB1557 (Item 1) modifying s. 1001.42
mandating a board "may not encourage classroom discussion
about sexual orientation or gender identity in primary grade levels
or in a manner that is not age-appropriate ..." (8)(c)3

See: <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=76545>

HB1557 was the companion bill of SB1834 - text is Item 1

☐

Discrimination **based on disability (specify)**

☐

Discrimination **based on age (specify)**

☐

Retaliation because you filed a complaint or asserted your rights (specify)

☐

Violation of the Boy Scouts of America Equal Access Act (specify)

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

The new law becomes effective 1 July 2022. OCR has jurisdiction as this law violates Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex. [20 U.S.C. §§ 1681 et seq., 34 C.F.R. Part 106]. As stated in your letter dated 2 March 2022 (item 2), OCR has personal jurisdiction as well. The attached "staff analysis" (item 5) was written by the author's staff and presents as legislative counsel's analysis. I believe OCR has sufficient information included with this complaint as 5 attachments pursuant to CPM Section 102 to proceed.

Florida has over a 70 year history of discriminating against LGBTQ+ community; the 1956 John's Committee was established to target public schools. See: "Archive Alive - The Johns Committee - Dr. Harvey Abrams" [https://www.youtube.com/watch?v=usAac_a80WY&list=WL&index=19] and "Florida's Lavender Scare They'd Like to Forget" [<https://www.youtube.com/watch?v=LbMjA2Cj2WY&list=WL&index=9>] as well as "Anita Bryant and The Save Our Children Campaign" [<https://www.youtube.com/watch?v=qcoRnaTB1aQ>].

6. What is the most **recent date** you were discriminated against?

Date: **not applicable**

7. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

☐

I am requesting a waiver of the 180-day time frame for filing this complaint. Please explain why you waited until now to file your complaint.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

☒ YES

☐ NO

If you answered **yes**, please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

Congressional hearings have not been equitable. Items at end of form are: (Item 3) letter from the US Congress, 21 Feb 2022; (4) Kelley Hayes "This is fear - mongering..." 8 Feb 2022; (5) HB 1557 Staff analysis, 15 Feb 2022; (6) Theresa Jacobs, Orange Co School Bd. 13 Feb 2022.

See also "Student activists take on 'Don't say Gay' bill" at <https://www.youtube.com/watch?v=XRrs29c7fVbk&list=WL&index=5>

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____

Case Number or Reference: _____

Results of Investigation/Findings by Agency or Court:

Page 5 of 12 – U.S. Department of Education, Office for Civil Rights Discrimination Complaint Form, Consent Form, and Complaint Processing Procedures

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Last Name: REINBECK First Name: RANDOLPH Middle Name: T
Home Telephone: 407.285.8509 Work Telephone: _____

11. What would you like the institution to do as a result of your complaint — what remedy are you seeking?

Declare the law to be unconstitutional as it violates Title IX provisions.

12. We cannot accept your complaint if it has not been signed. Please sign and date your complaint below.

03/28/2022

(Date)



(Signature)

(Date)

(Signature of person in Item 2)

Please mail the completed and signed Discrimination Complaint Form, your signed consent form and copies of any written material or other documents you believe will help OCR understand your complaint to the OCR Enforcement Office responsible for the state where the institution or entity about which you are complaining is located. You can locate the mailing information for the correct enforcement office on OCR's website at <http://wdcrobcopl01.ed.gov/CFAPPS/OCR/contactus.cfm>.

CONSENT FORM - FOR REVEALING NAME AND PERSONAL INFORMATION TO OTHERS

(Please print or type except for signature line)

Your Name: DR. BRIAN A SMITH

Name of School or Other Institution That You Have Filed This Complaint Against: _____

FLORIDA DEPARTMENT OF EDUCATION

- This form asks whether the Office for Civil Rights (OCR) may share your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.
- For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.
- If OCR is not allowed to reveal your name or personal information as described above, OCR may decide to close your complaint if OCR determines it is necessary to disclose your name or personal information in order to resolve whether the school discriminated against you.

NOTE: If you file a complaint with OCR, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint.

NOTE: OCR requires you to respond to its requests for information. Failure to cooperate with OCR's investigation and resolution activities could result in the closure of your complaint.

Please sign section A or section B (but not both) and return to OCR:

- If you filed the complaint on behalf of yourself, you should sign this form.
 - If you filed the complaint on behalf of another specific person, that other person should sign this form.
- EXCEPTION:** If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.
- If you filed the complaint on behalf of a class of people, rather than any specific person, you should sign the form.

A. **I give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others to further OCR's investigation and enforcement activities.**


Signature

03/28/2022
Date

OR

B. **I do not give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others.** I understand that OCR may have to close my complaint.

Signature

Date

I declare under penalty of perjury that it is true and correct that I am the person named above; and, if the complaint is filed on behalf of a minor child/ward, that I am that person's parent or legal guardian. This declaration only applies to the identity of the persons and does not extend to any of the claims filed in the complaint.

By Senator Baxley

12-01508B-22

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

March 3, 2022

VIA EMAIL ONLY

briansmithdc@aol.com

Dr. Brian A. Smith
12746 Parkbury Drive
Orlando, Florida 32828

Re: OCR Complaint No. 04-22-4023

Dear Dr. Smith:

On February 11, 2022, the U.S. Department of Education, Office for Civil Rights (OCR) received your complaint against the Florida Department of Education. You allege that a proposed Florida law, Senate Bill 1834 (SB1834), is discriminatory based on sex. After carefully reviewing the information you provided and publicly available information, OCR is dismissing your complaint for the reasons explained below.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department of Education, the Florida Department of Education is subject to Title IX and to OCR's jurisdiction.

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In the complaint you filed with OCR, you state that your complaint is proactive, and in describing the discriminatory act you cite anticipated passage of the bill as a violation of the law. You also request that all federal funding be withheld from the Florida Department of Education if the bill is enacted.

According to the Florida Senate's website, SB1834 is a bill still under consideration.¹ Therefore, the allegation is unripe and OCR is dismissing the complaint under Section 108(s) of OCR's *Case Processing Manual*.

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Please note that if SB1834 is passed into law, you may refile your complaint with OCR. For more information on our complaint processing procedures, you may access OCR's *Case Processing Manual* at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR would also like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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This concludes OCR's consideration of your complaint. If you have any questions, please contact Lorraine Irier, the OCR attorney assigned to this complaint, at 404-974-9349 or lorraine.rier@ed.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ebony Calloway".

Ebony Calloway
Compliance Team Leader

Congress of the United States
Washington, DC 20515

February 21, 2022

The Honorable Wilton Simpson
President of the Florida Senate
409, The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Chris Sprowls
Speaker of the Florida House of Representatives
420, The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear President Simpson and Speaker Sprowls:

We write today regarding two bills being considered by the Florida Legislature, misleadingly titled “Parental Rights in Education” (HB 1557 and SB 1834). Under this legislation, schools would be barred from classroom discussions about sexual orientation or gender identity in kindergarten through third grade, and more vaguely prohibit it in any “manner that is not age-appropriate or developmentally appropriate.” Furthermore, the bills open the floodgates to frivolous lawsuits by parents seeking to restrict the acknowledgement of LGBTQ+ identities in school. In the interest of academic freedom and the mental health of students, we urge you to oppose these bills and not allow them to come to the floor of the Florida House or Senate for a vote.

The ACLU is currently tracking nearly 150 active state bills that discriminate against the LGBTQ+ community, five of which are moving through the Florida Legislature.ⁱ While all of these bills threaten LGBTQ+ civil rights, HB 1557 and SB 1834 are additionally egregious due to their disastrous implications for the principles of free speech and freedom of expression and attack the very core of American constitutional democracy. Unfortunately, these bills continue to receive national attention since they have advanced in the legislative process beyond similar bills in other states seeking to restrict LGBTQ+ rights in education.

Under the guise of parents’ rights, these two bills fit into an alarming trend of rising threats to academic freedom and American children’s right to a comprehensive education. Contrary to assertions by the bills’ supporters that discussions of sexual orientation and gender identity are inappropriate for schoolchildren, **the American Psychological Association and the National Association of School Psychologists recommend that K-12 schools acknowledge sexual and**

gender diversity and “create policies that directly improve, *affirm*, and support the health and wellbeing of gender and sexual diverse children and adolescents of all ages.”ⁱⁱ

LGBTQ+ youth face a wide breadth of unique barriers to mental wellbeing as they venture to openly embrace their identities and seek acceptance from peers and adults, including their parents and teachers. According to the Trevor Project’s 2021 National Survey on LGBTQ Youth Mental Health, the overwhelming majority of LGBTQ+ youth reported symptoms of generalized anxiety and major depressive disorder.ⁱⁱⁱ The rising politicization of LGBTQ+ schoolchildren’s lives – and transgender and nonbinary youth in particular – has only worsened recently, with 94% reporting that “recent politics negatively impacted their mental health.” **Critically, LGBTQ-inclusive curricula improved mental health outcomes, and LGBTQ+ youth in a school environment that affirmed their identities – rather than erasing or rejecting it – were 33% less likely to report attempting suicide.**^{iv}

Florida schools already fail to provide a safe environment for LGBTQ+ students, with one survey of secondary students in Florida finding that 61% experienced at least one form of anti-LGBTQ discrimination.^v A new law silencing LGBTQ+ students and inciting a culture of fear around the discussion of LGBTQ+ identities will only serve to further degrade the poor state of LGBTQ+ youth mental health.

Schools must be institutions that foster learning, innovation, and growth – not secrecy and intimidation.

Whether students identify as a part of the LGBTQ+ community or not, they deserve to hear the stories of Bayard Rustin, a Black gay man who helped organize the 1963 March on Washington, and Marsha P. Johnson, a Black transgender activist who was a prominent figure in the Stonewall uprising. They should also learn about landmark Supreme Court cases like *U.S. v. Windsor* and *Obergefell v. Hodges* – and the loving same-sex couples behind these victories – which drastically advanced justice and equality for LGBTQ+ people in the United States.

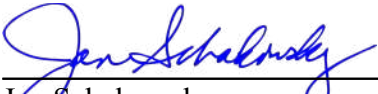
An education that lacks these fundamental details of the history of American civil rights is one that is incomplete.

LGBTQ+ kids *must not* be a pawn exploited in today’s political discourse – not in Florida, nor any other state in our nation. We ask that you consider the harmful toll this legislation would have on LGBTQ+ children’s mental health and individual liberties in education, oppose these bills, and do not bring them to a vote on the floor of the Florida House or Senate.

Sincerely,



Debbie Wasserman Schultz
Member of Congress



Jan Schakowsky
Member of Congress



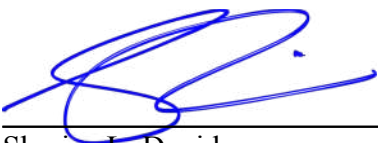
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Member of Congress



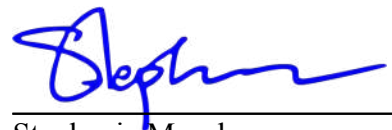
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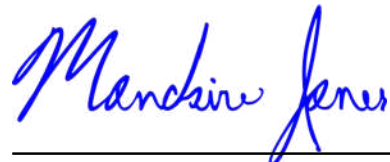
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Katie Porter
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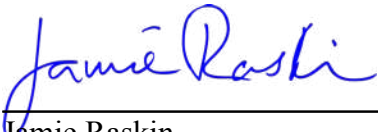
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Mike Quigley
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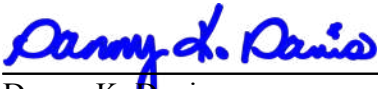
Jim Cooper
Member of Congress



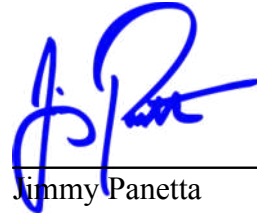
Jamie Raskin
Member of Congress



Dwight Evans
Member of Congress



Danny K. Davis
Member of Congress



Jimmy Panetta
Member of Congress



Ruben Gallego
Member of Congress

CC:

The Honorable Ron DeSantis, Governor of Florida

The Honorable Debbie Mayfield, Florida Senate Majority Leader

The Honorable Lauren Book, Florida Senate Minority Leader

The Honorable Michael Grant, Florida House Majority Leader

The Honorable Evan Jenne, Florida House Minority Leader

ⁱ American Civil Liberties Union. “Legislation Affecting LGBTQ Rights Across the Country.” February 11, 2022. <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>

ⁱⁱ American Psychological Association. “APA RESOLUTION on Supporting Sexual/Gender Diverse Children and Adolescents in Schools.” February 2020. <https://www.apa.org/about/policy/resolution-supporting-gender-diverse-children.pdf> *Emphasis added.*

ⁱⁱⁱ The Trevor Project. “National Survey on LGBTQ Youth Mental Health 2021.” <https://www.thetrevorproject.org/survey-2021/>

^{iv} In addition to the Trevor Project’s survey, see also research by GLSEN: “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

^v GLSEN. “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

'This is fear-mongering': Parents, teachers slam Senate bill limiting primary school talk about LGBTQ community

'Kids are gay. Kids are trans. Passing this bill does not make that any less true.'

A slew of teachers, parents and students spoke Tuesday morning against legislation that would more closely regulate LGBTQ instruction in the classroom and conversations with younger students.

Despite the wave of public testimony opposing the bill, the measure (**SB 1834**) was passed in a 6-3 vote along party lines by the Senate Education Committee.

The legislation, sponsored by Ocala Republican Sen. **Dennis Baxley**, would ban school districts from "encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate." It also would allow parents to sue a school district if such a violation occurred. In presenting the bill, Baxley said it would promote parental rights and prevent schools from advancing "social agendas."

"There's a reorientation going on in our culture, maybe some of it's very good. But parents have a parent role, and it's being ignored," Baxley said. "I think when you start opening sexual type discussions with children, you're entering a very dangerous zone."

Baxley made clear his concern was that rather than teaching students basic skills, teachers are tasked with "social engineering" LGBTQ matters. Some see the legislation as part of the **culture wars** shaping this Session's priorities.

The bill is akin to the Parents' Bill of Rights measure passed **last year** that also drew objections from the LGBTQ community. The law later **provided a legal avenue** to stop schools from requiring students to wear face masks over their parents' objections.

“My concern is that when we’re off track. Rather than equipping these very young students with basic skill sets ... we have an agenda that is part of the curriculum that is I believe, social engineering. And it’s age-inappropriate,” Baxley argued. “I think what’s happening is they have a political and cultural view that they get wrapped up in and they become advocates in that setting with children, and not thinking about, ‘This is the parent’s role. This is not my role.’”

So, what would violate the legislation? Sen. **Travis Hutson**, a St. John’s Republican, suggested an example of a homework assignment that included a math problem led by the premise of “Sally has two moms or Johnny has two dads.” That, Baxley said, is “exactly where the problem is.”

“There is a way to move agendas. People do get enthusiastic about agendas that they care about and affect their lives. And we’ve got to draw a line of authority,” Baxley said. “Parents do not want to be left out. They want to be in charge of their own and take responsibility for their students, and that is exactly the difference in initiating some kind of teaching method versus sticking to the mission.”

However, the pair did not discuss whether that assignment would be in violation of the legislation if the premise of the problem included a mother and father figure, which would also describe sexual orientation or gender identity.

The proposal, dubbed by some public commenters the “don’t say gay bill,” drew opposition from over 100 individuals Tuesday. The number of people wanting to speak on the bill led Sen. **Shevrin Jones**, the committee’s vice-chair, to waive Democrats’ opportunity to debate in committee in favor of hearing testimony.

Kara Gross, the legislative director and senior policy counsel for the ACLU of Florida, spoke against the legislation, calling it “government censorship.”

“If passed, it would effectively silence students from speaking about their LGBTQ+ family members, friends, neighbors and icons. Additionally, it would bar students from talking about their own lives and would erase their very existence,” she said. “These are not taboo subjects, but banning them makes them so. ... You don’t need to vote on this bill today, you’re choosing to.”

Jon Harris Maurer, public policy director for Equality Florida, echoed Gross’ concerns.

“It is patently offensive to say that school discussions, even with young children, referring to two moms or two dads — parents, like those that are sitting in this room that are your constituents ... are somehow dangerous or inappropriate,” he said.

Several parents within the LGBTQ community spoke with concern that discussion about their families would be not be considered “age-appropriate” under the legislation, and that the bill would lead to an increase in suicide attempts by students who identify with the LGBTQ community.

“My child, who is transgender, is not here with me because he could not get an equitable or safe education from the county that I’m selling my talents to every day,” said **Anita Hatcher**, a sixth-grade teacher in Jackson County. “When you deny one child, you deny every child. I have been embracing children’s questions in the classroom for 36 years as a public educator, as a trusted servant.”

Although Baxley presented the bill as regulating LGBTQ matters in a pre-K through third-grade curriculum, the legislation’s language does not make mention of curriculum instruction or grade levels. Its vague language, which bans “classroom discussion about sexual orientation or gender identity,” was also criticized by commenters.

Proponents of the legislation included the Family Policy Council; the Florida PTA opposes it. The Senate bill now heads to its second of three committees before it can be heard by the full chamber. In January, the House Education and Employment Committee **approved** Republican Rep. **Joe Harding’s** House version of the legislation (**HB 1557**).

 Kelly Hayes

 February 8, 2022

 9 min

Dennis Baxley

LGBTQ

Parental Rights

SB 1834 Schools

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Kelly Hayes

Kelly Hayes studied journalism and political science at the University of Florida. Kelly was born and raised in Tampa Bay. A recent graduate, she enjoys government and legal reporting. She has experience covering the Florida Legislature as well as local government, and is a proud Alligator alum. You can reach Kelly at kelly@floridapolitics.com.

PREVIOUS

Citrus County looks to create economic development council

NEXT

House committee clears bill outlawing residential protests



2 comments

Nancy Lawther

February 9, 2022 at 7:31 am

Good morning. I am Dr. Nancy Lawther, who spoke on behalf of Florida PTA yesterday. I spoke in opposition to SB 1834. My testimony was cut off before the final sentence, in which I would have urged committee members to vote against the bill.

[REPLY](#)

Arnieus

February 9, 2022 at 10:38 am

Is there anything as a parent that you would object to being taught public school? Personally I am opposed to public schools advocating any ideology.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS**BILL #:** PCS for CS/HB 1557 Parental Rights in Education**SPONSOR(S):** Judiciary Committee**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Wolff	Kramer

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.

At the beginning of each school year, a school district must notify parents of all health care services offered at their student's school and provide the parent the opportunity to individually consent to, or decline, each service. Additionally, schools may not administer a questionnaire or health screening form to a student in kindergarten through grade 3 without first receiving consent from the student's parent.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents’ constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children’s best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent’s constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²³

Florida School Districts Maintain Policies that Exclude Parents

While the Parents' Bill of Rights provides that important information relating to a minor child should not be withheld from his or her parent while the minor child is in the custody of the school district,²⁴ multiple school districts in Florida maintain policies that exclude parents from discussions and decisions on sensitive topics relating to students.²⁵ In addition, at least one Florida school district is currently

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1014.02(1), F.S.

²⁵ See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at

https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf; Miami-Dade County Public Schools, *2020-2021 Guidelines for Promoting Safe and Inclusive Schools*, p. 7, available at <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>;

Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Guidelines*, (Oct. 2018), p. 2, available at https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide*, pp. 11-12, available at <https://www.vcsedu.org/sites/default/files/department-files/Equity/VCS%20LGBTQ%20Support%20Guide%202020.pdf>;

and Hillsborough County Public Schools, *Creating Safe Schools for All Students*, p. 5, available at <https://www.lgba.org/wp-content/uploads/2019/12/lgbtq-resource-guide-1.pdf>.

involved in litigation with a parent after allegedly withholding information from the parent regarding their student's gender transition at school.²⁶

Parental Consent for Healthcare Services in Schools

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.²⁷ The state's interest diminishes as the severity of an affliction and the likelihood of death increase.²⁸

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.²⁹

In 2021,³⁰ the Parents' Bill of Rights established parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:³¹

- A health care practitioner,³² or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider³³ may not allow a medical procedure to be performed on a minor child in its facility.

It is a first-degree misdemeanor to violate these parental consent requirements, subject to a fine of up to \$1,000 and imprisonment of up to one year,³⁴ and health care practitioners may also be subject to disciplinary action³⁵ for such violations.³⁶

Medical Treatment without Parental Consent

Physicians, paramedics, emergency medical technicians, or other emergency medical services personnel are authorized to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor.³⁷ Even in emergency situations, medical treatment can only be provided without parental consent if:³⁸

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq-guide/6342695001/> (last visited Jan 17, 2022). The Leon County School District LGBTQ guide previously did not require disclosure of information to parents but has been taken down from the website and is undergoing review by the district. *Id.*

²⁷ *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).

²⁸ *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994).

²⁹ *Id.*

³⁰ Chapter 2021-199, F.S.

³¹ Section 1014.06(1)-(2), F.S.

³² Section 456.001, F.S.

³³ "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

³⁴ Section 1014.06(5), F.S.

³⁵ Section 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. Section 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations. *See e.g.* rule 64B9-8.006, F.A.C. (Board of Nursing rule including discipline for violations of s. 1014.06, F.S.).

³⁶ Section 1014.06(5), F.S.

³⁷ Section 743.064, F.S.

³⁸ Section 743.064(2), F.S.

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.³⁹

Current law establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions.⁴⁰ Specifically, the following people may consent, in this order:⁴¹

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;⁴²
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,⁴³ then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise:⁴⁴

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility⁴⁵ or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.⁴⁶

The Parents' Bill of Rights consent requirements specifically do not apply to health care related to an abortion.⁴⁷ Additionally, the Parents' Bill of Rights created an exception for parental consent requirements for a clinical laboratory, unless the services provided are delivered through a direct encounter with the minor at the clinical laboratory facility.⁴⁸

School District Compliance with Parental Consent for Health Care Services

³⁹ Section 743.064(3), F.S.

⁴⁰ Section 743.0645, F.S.

⁴¹ Section 746.0645(2), F.S.

⁴² A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

⁴³ Specifically, under chs. 39, 984, or 985, F.S.

⁴⁴ Section 743.0645, F.S.

⁴⁵ Section 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.

⁴⁶ Section 743.0645(2)-(4), F.S.

⁴⁷ Section 1014.06(3), F.S. Abortions in Florida are exclusively governed by ch. 390, F.S.

⁴⁸ Section 1014.06(4), F.S.

Public schools in Florida offer a wide range of health care services to students ranging from treatment of minor cuts and scrapes to vision, hearing, scoliosis, and other screenings to the administration of immunizations and emotional and mental health counseling.⁴⁹ To comply with the requirement for parental consent when providing health care services to minors, school districts have developed parental consent forms.⁵⁰ In some instances, parents are provided the opportunity to consent individually to services provided at schools.⁵¹ However, some school district consent forms provide for a blanket consent to all health care services provided through the school district.⁵²

Effect of Proposed Changes

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to their well-being with their parent or facilitate a discussion with the parent.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. However, the bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student.

⁴⁹ See Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵⁰ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵¹ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵² See Brevard Public Schools, *Parental Consent for Healthcare*, available at <https://fl02201431.schoolwires.net/site/handlers/filedownload.ashx?moduleinstanceid=10161&dataid=80765&FileName=Parental%20Consent%20for%20Healthcare.pdf>; School District of Osceola County, *Student Health Information*, Feb. 2020, available at <https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/2370/Health%20Form.pdf>; Sarasota County Schools, *Parental Consent for Health Services 2021-2022*, July 2021, available at <https://www.sarasotacountyschools.net/site/handlers/filedownload.ashx?moduleinstanceid=3465&dataid=85414&FileName=Parental%20Consent%20for%20Health%20Services%202021-2022.pdf>.

Additionally, the bill prohibits classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

The bill requires school districts, at the beginning of each school year, to notify parents of each health care service available to their student through the school district and permit parents to consent to, or decline, each service individually. The bill also requires school districts to obtain parental consent before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3. A copy of the questionnaire or health screening form must be provided to the parent in advance.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles; and
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that prohibit school district personnel from notifying a parent about specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; providing construction; prohibiting classroom discussion about sexual orientation or gender identity in certain grade levels or in a specified manner; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education; requiring the department to review and update, as necessary, specified materials by a certain date; requiring school districts to notify parents of healthcare services and provide opportunity to consent or decline such services; requiring school districts to obtain parental permission before administering questionnaire or health screening form; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents.

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

From: Teresa.Jacobs@ocps.net,
To: briansmithdc@aol.com,
Subject: Re: SB1834
Date: Sun, Feb 13, 2022 12:33 pm

Mr. Smith,

Thank you for writing to me about this legislation. Our board is equally concerned and several of us were in Tallahassee last week advocating for additional funding to provide competitive salaries for our support personnel, such as bus drivers, and higher pay for our experienced teachers.

We also advocated against SB 1834 and in favor of our continued ability to make decisions at a local level. However, if this bill passes and is signed into law by the governor, we will have no choice but to abide by it. Any challenges to our procedures referenced in this bill would then be decided by the courts, not by a democratic process.

Our Central Florida delegation was very supportive of our positions. Unfortunately, the leadership in the House and Senate and the majority of the legislature have not been supportive of adequately funding public education or protecting local or democratic decision-making authority.

Teresa Jacobs
School Board Chair
Orange County Public Schools
45 W. Amelia St., Orlando, Florida 32801
407-317-3236
www.ocps.net

From: Brian Smith, DC <briansmithdc@aol.com>
Sent: Friday, February 11, 2022 09:58 PM
To: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>
Subject: SB1834

 **CAUTION:** This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

Ms. Theresa Jacobs,

You are undoubtedly aware the legislature is considering SB1834, a piece of hate legislation that enables 1 person to dictate school policy for an entire district. Not only is this unconstitutional, but it is also un-American and undemocratic. The system of education utilized to instruct the leaders of tomorrow should in no way be subject to an unAmerican process as will become law if this is passed.

I would like to see the school board publicly avow their dedication to the democratic process by formally adopting a procedure to require any parent-led restriction upon the curriculum taught in public schools such as is contained in SB1834 to only be adopted after it is put to a referendum placed before the registered voters within the school district.

As you are probably aware, the passage of this law will jeopardize Federal funding for all levels of Florida's education system, and Florida's reputation as having severe deficiencies within the education system still has not recovered from similarly misguided, hate-inspired policies adopted in the late

1950s and early 1960s. If this becomes law it will have severe negative implications on the state's education as a whole when compared to the other states, an impact it will suffer for decades to come.

It will also embroil the State in federal legal actions that will waste taxpayer dollars at both the State and federal levels. Not to mention the withholding of federal funds until the state complies with federal laws; it is foreseeable that the immediate future for OCSD does not bode well if steps are not taken now to (1) prevent the implementation of an undemocratic law; (2) make plans for the loss of federal dollars; and (3) as an action taken under this law by OCSD will be answered with a lawsuit, you should take measures to insulate the Board from such lawsuits as much as possible before it becomes an issue.

Sincerely,

Dr. Brian A. Smith
12746 Parkbury Drive
Orlando, FL 32828

407.457.2800

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[References: Florida State Constitution I.24, Florida State Statutes Chapter 119, and OCPS Management Directive A-9.] If you have received this message in error, or are not the named recipient notify the sender and delete this message from your computer.

Congress of the United States
Washington, DC 20515

February 21, 2022

The Honorable Wilton Simpson
President of the Florida Senate
409, The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Chris Sprowls
Speaker of the Florida House of Representatives
420, The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear President Simpson and Speaker Sprowls:

We write today regarding two bills being considered by the Florida Legislature, misleadingly titled “Parental Rights in Education” (HB 1557 and SB 1834). Under this legislation, schools would be barred from classroom discussions about sexual orientation or gender identity in kindergarten through third grade, and more vaguely prohibit it in any “manner that is not age-appropriate or developmentally appropriate.” Furthermore, the bills open the floodgates to frivolous lawsuits by parents seeking to restrict the acknowledgement of LGBTQ+ identities in school. In the interest of academic freedom and the mental health of students, we urge you to oppose these bills and not allow them to come to the floor of the Florida House or Senate for a vote.

The ACLU is currently tracking nearly 150 active state bills that discriminate against the LGBTQ+ community, five of which are moving through the Florida Legislature.ⁱ While all of these bills threaten LGBTQ+ civil rights, HB 1557 and SB 1834 are additionally egregious due to their disastrous implications for the principles of free speech and freedom of expression and attack the very core of American constitutional democracy. Unfortunately, these bills continue to receive national attention since they have advanced in the legislative process beyond similar bills in other states seeking to restrict LGBTQ+ rights in education.

Under the guise of parents’ rights, these two bills fit into an alarming trend of rising threats to academic freedom and American children’s right to a comprehensive education. Contrary to assertions by the bills’ supporters that discussions of sexual orientation and gender identity are inappropriate for schoolchildren, **the American Psychological Association and the National Association of School Psychologists recommend that K-12 schools acknowledge sexual and**

gender diversity and “create policies that directly improve, *affirm*, and support the health and wellbeing of gender and sexual diverse children and adolescents of all ages.”ⁱⁱ

LGBTQ+ youth face a wide breadth of unique barriers to mental wellbeing as they venture to openly embrace their identities and seek acceptance from peers and adults, including their parents and teachers. According to the Trevor Project’s 2021 National Survey on LGBTQ Youth Mental Health, the overwhelming majority of LGBTQ+ youth reported symptoms of generalized anxiety and major depressive disorder.ⁱⁱⁱ The rising politicization of LGBTQ+ schoolchildren’s lives – and transgender and nonbinary youth in particular – has only worsened recently, with 94% reporting that “recent politics negatively impacted their mental health.” **Critically, LGBTQ-inclusive curricula improved mental health outcomes, and LGBTQ+ youth in a school environment that affirmed their identities – rather than erasing or rejecting it – were 33% less likely to report attempting suicide.**^{iv}

Florida schools already fail to provide a safe environment for LGBTQ+ students, with one survey of secondary students in Florida finding that 61% experienced at least one form of anti-LGBTQ discrimination.^v A new law silencing LGBTQ+ students and inciting a culture of fear around the discussion of LGBTQ+ identities will only serve to further degrade the poor state of LGBTQ+ youth mental health.

Schools must be institutions that foster learning, innovation, and growth – not secrecy and intimidation.

Whether students identify as a part of the LGBTQ+ community or not, they deserve to hear the stories of Bayard Rustin, a Black gay man who helped organize the 1963 March on Washington, and Marsha P. Johnson, a Black transgender activist who was a prominent figure in the Stonewall uprising. They should also learn about landmark Supreme Court cases like *U.S. v. Windsor* and *Obergefell v. Hodges* – and the loving same-sex couples behind these victories – which drastically advanced justice and equality for LGBTQ+ people in the United States.

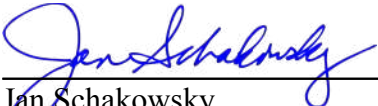
An education that lacks these fundamental details of the history of American civil rights is one that is incomplete.

LGBTQ+ kids *must not* be a pawn exploited in today’s political discourse – not in Florida, nor any other state in our nation. We ask that you consider the harmful toll this legislation would have on LGBTQ+ children’s mental health and individual liberties in education, oppose these bills, and do not bring them to a vote on the floor of the Florida House or Senate.

Sincerely,



Debbie Wasserman Schultz
Member of Congress



Jan Schakowsky
Member of Congress



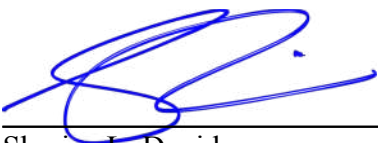
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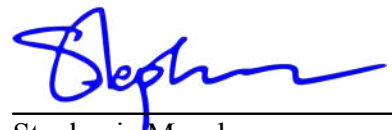
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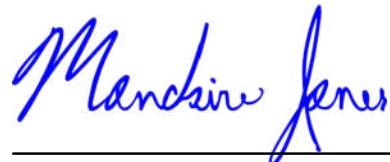
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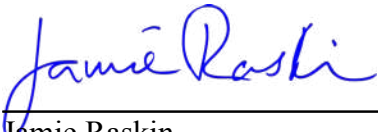
Mondaire Jones
Member of Congress



Mike Quigley
Member of Congress



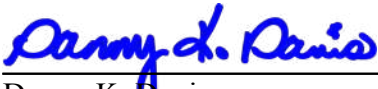
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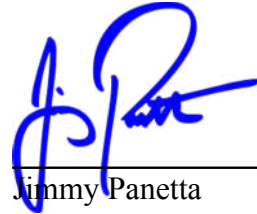
Jamie Raskin
Member of Congress



Dwight Evans
Member of Congress



Danny K. Davis
Member of Congress



Jimmy Panetta
Member of Congress



Ruben Gallego
Member of Congress

CC:

The Honorable Ron DeSantis, Governor of Florida

The Honorable Debbie Mayfield, Florida Senate Majority Leader

The Honorable Lauren Book, Florida Senate Minority Leader

The Honorable Michael Grant, Florida House Majority Leader

The Honorable Evan Jenne, Florida House Minority Leader

ⁱ American Civil Liberties Union. “Legislation Affecting LGBTQ Rights Across the Country.” February 11, 2022. <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country>

ⁱⁱ American Psychological Association. “APA RESOLUTION on Supporting Sexual/Gender Diverse Children and Adolescents in Schools.” February 2020. <https://www.apa.org/about/policy/resolution-supporting-gender-diverse-children.pdf> *Emphasis added.*

ⁱⁱⁱ The Trevor Project. “National Survey on LGBTQ Youth Mental Health 2021.” <https://www.thetrevorproject.org/survey-2021/>

^{iv} In addition to the Trevor Project’s survey, see also research by GLSEN: “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

^v GLSEN. “2019 Snapshot: School Climate for LGBTQ Students in Florida.” January 2021. <https://www.glsen.org/sites/default/files/2021-01/Florida-Snapshot-2019.pdf>

'This is fear-mongering': Parents, teachers slam Senate bill limiting primary school talk about LGBTQ community

'Kids are gay. Kids are trans. Passing this bill does not make that any less true.'

A slew of teachers, parents and students spoke Tuesday morning against legislation that would more closely regulate LGBTQ instruction in the classroom and conversations with younger students.

Despite the wave of public testimony opposing the bill, the measure (**SB 1834**) was passed in a 6-3 vote along party lines by the Senate Education Committee.

The legislation, sponsored by Ocala Republican Sen. **Dennis Baxley**, would ban school districts from "encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate." It also would allow parents to sue a school district if such a violation occurred. In presenting the bill, Baxley said it would promote parental rights and prevent schools from advancing "social agendas."

"There's a reorientation going on in our culture, maybe some of it's very good. But parents have a parent role, and it's being ignored," Baxley said. "I think when you start opening sexual type discussions with children, you're entering a very dangerous zone."

Baxley made clear his concern was that rather than teaching students basic skills, teachers are tasked with "social engineering" LGBTQ matters. Some see the legislation as part of the **culture wars** shaping this Session's priorities.

The bill is akin to the Parents' Bill of Rights measure passed **last year** that also drew objections from the LGBTQ community. The law later **provided a legal avenue** to stop schools from requiring students to wear face masks over their parents' objections.

“My concern is that when we’re off track. Rather than equipping these very young students with basic skill sets ... we have an agenda that is part of the curriculum that is I believe, social engineering. And it’s age-inappropriate,” Baxley argued. “I think what’s happening is they have a political and cultural view that they get wrapped up in and they become advocates in that setting with children, and not thinking about, ‘This is the parent’s role. This is not my role.’”

So, what would violate the legislation? Sen. **Travis Hutson**, a St. John’s Republican, suggested an example of a homework assignment that included a math problem led by the premise of “Sally has two moms or Johnny has two dads.” That, Baxley said, is “exactly where the problem is.”

“There is a way to move agendas. People do get enthusiastic about agendas that they care about and affect their lives. And we’ve got to draw a line of authority,” Baxley said. “Parents do not want to be left out. They want to be in charge of their own and take responsibility for their students, and that is exactly the difference in initiating some kind of teaching method versus sticking to the mission.”

However, the pair did not discuss whether that assignment would be in violation of the legislation if the premise of the problem included a mother and father figure, which would also describe sexual orientation or gender identity.

The proposal, dubbed by some public commenters the “don’t say gay bill,” drew opposition from over 100 individuals Tuesday. The number of people wanting to speak on the bill led Sen. **Shevrin Jones**, the committee’s vice-chair, to waive Democrats’ opportunity to debate in committee in favor of hearing testimony.

Kara Gross, the legislative director and senior policy counsel for the ACLU of Florida, spoke against the legislation, calling it “government censorship.”

“If passed, it would effectively silence students from speaking about their LGBTQ+ family members, friends, neighbors and icons. Additionally, it would bar students from talking about their own lives and would erase their very existence,” she said. “These are not taboo subjects, but banning them makes them so. ... You don’t need to vote on this bill today, you’re choosing to.”

Jon Harris Maurer, public policy director for Equality Florida, echoed Gross’ concerns.

“It is patently offensive to say that school discussions, even with young children, referring to two moms or two dads — parents, like those that are sitting in this room that are your constituents ... are somehow dangerous or inappropriate,” he said.

Several parents within the LGBTQ community spoke with concern that discussion about their families would be not be considered “age-appropriate” under the legislation, and that the bill would lead to an increase in suicide attempts by students who identify with the LGBTQ community.

“My child, who is transgender, is not here with me because he could not get an equitable or safe education from the county that I’m selling my talents to every day,” said **Anita Hatcher**, a sixth-grade teacher in Jackson County. “When you deny one child, you deny every child. I have been embracing children’s questions in the classroom for 36 years as a public educator, as a trusted servant.”

Although Baxley presented the bill as regulating LGBTQ matters in a pre-K through third-grade curriculum, the legislation’s language does not make mention of curriculum instruction or grade levels. Its vague language, which bans “classroom discussion about sexual orientation or gender identity,” was also criticized by commenters.

Proponents of the legislation included the Family Policy Council; the Florida PTA opposes it. The Senate bill now heads to its second of three committees before it can be heard by the full chamber. In January, the House Education and Employment Committee **approved** Republican Rep. **Joe Harding’s** House version of the legislation (**HB 1557**).

 Kelly Hayes

 February 8, 2022

 9 min

Dennis Baxley

LGBTQ

Parental Rights

SB 1834 Schools

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Kelly Hayes

Kelly Hayes studied journalism and political science at the University of Florida. Kelly was born and raised in Tampa Bay. A recent graduate, she enjoys government and legal reporting. She has experience covering the Florida Legislature as well as local government, and is a proud Alligator alum. You can reach Kelly at kelly@floridapolitics.com.

PREVIOUS

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NEXT

House committee clears bill outlawing residential protests



2 comments

Nancy Lawther

February 9, 2022 at 7:31 am

Good morning. I am Dr. Nancy Lawther, who spoke on behalf of Florida PTA yesterday. I spoke in opposition to SB 1834. My testimony was cut off before the final sentence, in which I would have urged committee members to vote against the bill.

[REPLY](#)

Arnieus

February 9, 2022 at 10:38 am

Is there anything as a parent that you would object to being taught public school? Personally I am opposed to public schools advocating any ideology.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1557 Parental Rights in Education

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Wolff	Kramer

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.

At the beginning of each school year, a school district must notify parents of all health care services offered at their student's school and provide the parent the opportunity to individually consent to, or decline, each service. Additionally, schools may not administer a questionnaire or health screening form to a student in kindergarten through grade 3 without first receiving consent from the student's parent.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are ‘persons’ under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida’s constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents’ constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children’s best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent’s constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²³

Florida School Districts Maintain Policies that Exclude Parents

While the Parents' Bill of Rights provides that important information relating to a minor child should not be withheld from his or her parent while the minor child is in the custody of the school district,²⁴ multiple school districts in Florida maintain policies that exclude parents from discussions and decisions on sensitive topics relating to students.²⁵ In addition, at least one Florida school district is currently

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1014.02(1), F.S.

²⁵ See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at

https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf; Miami-Dade County Public Schools, *2020-2021 Guidelines for Promoting Safe and Inclusive Schools*, p. 7, available at <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>;

Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Guidelines*, (Oct. 2018), p. 2, available at https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide*, pp. 11-12, available at <https://www.vcsedu.org/sites/default/files/department-files/Equity/VCS%20LGBTQ%20Support%20Guide%202020.pdf>;

and Hillsborough County Public Schools, *Creating Safe Schools for All Students*, p. 5, available at <https://www.lgba.org/wp-content/uploads/2019/12/lgbtq-resource-guide-1.pdf>.

involved in litigation with a parent after allegedly withholding information from the parent regarding their student's gender transition at school.²⁶

Parental Consent for Healthcare Services in Schools

Parental Consent for Medical Treatment

Parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the state also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.²⁷ The state's interest diminishes as the severity of an affliction and the likelihood of death increase.²⁸

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.²⁹

In 2021,³⁰ the Parents' Bill of Rights established parental consent requirements for health care services. Specifically, unless otherwise permitted by law, without written, parental consent:³¹

- A health care practitioner,³² or an individual employed by such health care practitioner, may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor.
- A provider³³ may not allow a medical procedure to be performed on a minor child in its facility.

It is a first-degree misdemeanor to violate these parental consent requirements, subject to a fine of up to \$1,000 and imprisonment of up to one year,³⁴ and health care practitioners may also be subject to disciplinary action³⁵ for such violations.³⁶

Medical Treatment without Parental Consent

Physicians, paramedics, emergency medical technicians, or other emergency medical services personnel are authorized to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor.³⁷ Even in emergency situations, medical treatment can only be provided without parental consent if:³⁸

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq-guide/6342695001/> (last visited Jan 17, 2022). The Leon County School District LGBTQ guide previously did not require disclosure of information to parents but has been taken down from the website and is undergoing review by the district. *Id.*

²⁷ *Von Eiff v. Azicri*, 720 So. 2d 510, 515 (Fla. 1998).

²⁸ *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994).

²⁹ *Id.*

³⁰ Chapter 2021-199, F.S.

³¹ Section 1014.06(1)-(2), F.S.

³² Section 456.001, F.S.

³³ "Provider" means any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

³⁴ Section 1014.06(5), F.S.

³⁵ Section 456.072(1), F.S., provides grounds for disciplinary action against health care practitioners. Section 408.813, F.S., authorizes the Agency for Health Care Administration to impose administrative fines against providers for violations of its regulations. *See e.g.* rule 64B9-8.006, F.A.C. (Board of Nursing rule including discipline for violations of s. 1014.06, F.S.).

³⁶ Section 1014.06(5), F.S.

³⁷ Section 743.064, F.S.

³⁸ Section 743.064(2), F.S.

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital.
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is administered and document in the hospital records the reason parental consent was not initially obtained. This must include a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.³⁹

Current law establishes a list of people, by priority, who may consent to the medical care or treatment of a minor in instances where the treatment provider is unable to contact the parent or legal guardian and the provider has not been given contrary instructions.⁴⁰ Specifically, the following people may consent, in this order:⁴¹

- A health care surrogate or a person with power of attorney to provide medical consent for the minor;⁴²
- The stepparent;
- The grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

If a parent or legal guardian cannot be reached while the child is committed to the Department of Children Families or the Department of Juvenile Justice,⁴³ then the following individuals may consent to the medical care or treatment of a minor, unless the parent or legal guardian has expressly stated otherwise:⁴⁴

- The caseworker, juvenile probation officer, or person primarily responsible for the case management of the child.
- The administrator of the state-licensed facility⁴⁵ or state-contracted or state-operated delinquency residential treatment facility where the child is committed.

In both of these instances, the treatment provider must document the reasonable attempts made to contact the parent or legal guardian in the minor's treatment records, and must notify the parent or legal guardian as soon as possible after the medical care or treatment is administered.⁴⁶

The Parents' Bill of Rights consent requirements specifically do not apply to health care related to an abortion.⁴⁷ Additionally, the Parents' Bill of Rights created an exception for parental consent requirements for a clinical laboratory, unless the services provided are delivered through a direct encounter with the minor at the clinical laboratory facility.⁴⁸

School District Compliance with Parental Consent for Health Care Services

³⁹ Section 743.064(3), F.S.

⁴⁰ Section 743.0645, F.S.

⁴¹ Section 746.0645(2), F.S.

⁴² A health care surrogate designation under s. 765.2035, F.S., executed after September 30, 2015, or a power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual who executes the health care surrogate for a minor or power of attorney, s. 743.0645(2)(a), F.S.

⁴³ Specifically, under chs. 39, 984, or 985, F.S.

⁴⁴ Section 743.0645, F.S.

⁴⁵ Section 393.067, F.S., licensed facilities for individuals with developmental disabilities; s. 394.875, F.S., licensed mental health facilities for children and adolescents; s. 409.175, F.S., licensed family foster homes, residential child-caring agencies, and child-placing agencies.

⁴⁶ Section 743.0645(2)-(4), F.S.

⁴⁷ Section 1014.06(3), F.S. Abortions in Florida are exclusively governed by ch. 390, F.S.

⁴⁸ Section 1014.06(4), F.S.

Public schools in Florida offer a wide range of health care services to students ranging from treatment of minor cuts and scrapes to vision, hearing, scoliosis, and other screenings to the administration of immunizations and emotional and mental health counseling.⁴⁹ To comply with the requirement for parental consent when providing health care services to minors, school districts have developed parental consent forms.⁵⁰ In some instances, parents are provided the opportunity to consent individually to services provided at schools.⁵¹ However, some school district consent forms provide for a blanket consent to all health care services provided through the school district.⁵²

Effect of Proposed Changes

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to their well-being with their parent or facilitate a discussion with the parent.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. However, the bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student.

⁴⁹ See Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵⁰ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵¹ Broward County Public Schools, *Parent/Guardian Consent for School Health Services*, August 2021, available at https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/20468/PARENT%20GUARDIAN%20CONSENT%20FOR%20SCHOOL%20HEALTH%20SERVICES_1.pdf; Florida Department of Health in Pinellas County, *Consent for School-Based Health Clinic Services*, April 2021, available at <https://pinellas.floridahealth.gov/programs-and-services/clinical-and-nutrition-services/school-clinics/documents/clinic-consent-packet.pdf>; Bay District Schools, *Parental Consent for School Health Services 2021-2022*, available at <https://www.bay.k12.fl.us/uploads/BDS%20School%20Health%20Consent%20Form%202021-22%20SY%20ENGLISH.pdf>.

⁵² See Brevard Public Schools, *Parental Consent for Healthcare*, available at <https://fl02201431.schoolwires.net/site/handlers/filedownload.ashx?moduleinstanceid=10161&dataid=80765&FileName=Parental%20Consent%20for%20Healthcare.pdf>; School District of Osceola County, *Student Health Information*, Feb. 2020, available at <https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/2370/Health%20Form.pdf>; Sarasota County Schools, *Parental Consent for Health Services 2021-2022*, July 2021, available at <https://www.sarasotacountyschools.net/site/handlers/filedownload.ashx?moduleinstanceid=3465&dataid=85414&FileName=Parental%20Consent%20for%20Health%20Services%202021-2022.pdf>.

Additionally, the bill prohibits classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.

The bill requires school districts, at the beginning of each school year, to notify parents of each health care service available to their student through the school district and permit parents to consent to, or decline, each service individually. The bill also requires school districts to obtain parental consent before administering a student well-being questionnaire or health screening form to a student in kindergarten through grade 3. A copy of the questionnaire or health screening form must be provided to the parent in advance.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles; and
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that prohibit school district personnel from notifying a parent about specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; providing construction; prohibiting classroom discussion about sexual orientation or gender identity in certain grade levels or in a specified manner; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education; requiring the department to review and update, as necessary, specified materials by a certain date; requiring school districts to notify parents of healthcare services and provide opportunity to consent or decline such services; requiring school districts to obtain parental permission before administering questionnaire or health screening form; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents.

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

From: Teresa.Jacobs@ocps.net,
To: briansmithdc@aol.com,
Subject: Re: SB1834
Date: Sun, Feb 13, 2022 12:33 pm

Mr. Smith,

Thank you for writing to me about this legislation. Our board is equally concerned and several of us were in Tallahassee last week advocating for additional funding to provide competitive salaries for our support personnel, such as bus drivers, and higher pay for our experienced teachers.

We also advocated against SB 1834 and in favor of our continued ability to make decisions at a local level. However, if this bill passes and is signed into law by the governor, we will have no choice but to abide by it. Any challenges to our procedures referenced in this bill would then be decided by the courts, not by a democratic process.

Our Central Florida delegation was very supportive of our positions. Unfortunately, the leadership in the House and Senate and the majority of the legislature have not been supportive of adequately funding public education or protecting local or democratic decision-making authority.

Teresa Jacobs
School Board Chair
Orange County Public Schools
45 W. Amelia St., Orlando, Florida 32801
407-317-3236
www.ocps.net

From: Brian Smith, DC <briansmithdc@aol.com>
Sent: Friday, February 11, 2022 09:58 PM
To: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>
Subject: SB1834

 **CAUTION:** This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

Ms. Theresa Jacobs,

You are undoubtedly aware the legislature is considering SB1834, a piece of hate legislation that enables 1 person to dictate school policy for an entire district. Not only is this unconstitutional, but it is also un-American and undemocratic. The system of education utilized to instruct the leaders of tomorrow should in no way be subject to an unAmerican process as will become law if this is passed.

I would like to see the school board publicly avow their dedication to the democratic process by formally adopting a procedure to require any parent-led restriction upon the curriculum taught in public schools such as is contained in SB1834 to only be adopted after it is put to a referendum placed before the registered voters within the school district.

As you are probably aware, the passage of this law will jeopardize Federal funding for all levels of Florida's education system, and Florida's reputation as having severe deficiencies within the education system still has not recovered from similarly misguided, hate-inspired policies adopted in the late

1950s and early 1960s. If this becomes law it will have severe negative implications on the state's education as a whole when compared to the other states, an impact it will suffer for decades to come.

It will also embroil the State in federal legal actions that will waste taxpayer dollars at both the State and federal levels. Not to mention the withholding of federal funds until the state complies with federal laws; it is foreseeable that the immediate future for OCSD does not bode well if steps are not taken now to (1) prevent the implementation of an undemocratic law; (2) make plans for the loss of federal dollars; and (3) as an action taken under this law by OCSD will be answered with a lawsuit, you should take measures to insulate the Board from such lawsuits as much as possible before it becomes an issue.

Sincerely,

Dr. Brian A. Smith
12746 Parkbury Drive
Orlando, FL 32828

407.457.2800

The information contained in this e-mail message is intended solely for the recipient(s) and may contain privileged information. Tampering with or altering the contents of this message is prohibited. This information is the same as any written document and may be subject to all rules governing public information according to Florida Statutes. Any message that falls under Chapter 119 shall not be altered in a manner that misrepresents the activities of Orange County Public Schools.
[References: Florida State Constitution I.24, Florida State Statutes Chapter 119, and OCPS Management Directive A-9.] If you have received this message in error, or are not the named recipient notify the sender and delete this message from your computer.

From: Lawrence.Hughes@ed.gov,
To: briansmithdc@aol.com,
Subject: DO NOT REPLY - LOA #04224031
Date: Wed, Mar 30, 2022 9:35 am
Attachments: ACKNOWL.docx (124K), OCR COMPLAINT PROCESSING PROCEDURES.pdf (105K)

RE: Florida Dept of Education | #04224031 | LOA | 03/28/2022

Hello Dr. Smith,

Please find attached, our Letter of Acknowledgement (LOA) of receipt of your complaint, and a copy of our procedure guide. Please review these documents closely as they contain valuable, time-sensitive instructions regarding your complaint against Florida Dept of Education.

Your complaint is now in the Evaluation stage. If you have any other questions or new documents to add, please feel free to submit them to our office email address:

OCR.Atlanta@ed.gov

Please be sure to include your Complaint number. This will ensure your questions and submissions receive the attention they deserve.

Thank you for your patience during this process.

Sincerely,

Lawrence K. Hughes

Program Support Assistant

U.S. Department of Education

[Office for Civil Rights-Atlanta Office, Southern Division](#)

[61 Forsyth St. SW, Suite 19T10](#)

[Atlanta, GA 30303](#)

“Our lives begin to end the day we become silent about things that matter.” – MLK Jr.

8/20/2022

DO NOT REPLY - LOA #04224031

From: Lorraine.Irier@ed.gov,
To: briansmithdc@aol.com,
Subject: 04-22-4031 FL DOE
Date: Mon, Apr 18, 2022 2:15 pm

Dr. Smith,

Thank you for speaking with me today. I was reviewing your written complaint again and noticed you indicated that you had attempted to resolve these allegations with an institution through an internal grievance procedure.

- Can you please tell me what institution you contacted and if you filed a formal complaint with that institution?
- Also as discussed during our call today, please provide any other information you might have to indicate that the law is discriminatory?
- Do you know of any schools

Please provide the above information by Friday April 22, 2022.

Best,

Lorraine Irier

Attorney

(she/her/Ms.)

pronounced: luh-RAYN IH-ree-ayr

U.S. Department of Education, Office for Civil Rights

Direct Dial: 202-987-1876

From: briansmithdc@aol.com,
To: Lorraine.Irier@ed.gov,
Subject: Re: 04-22-4031 FL DOE
Date: Mon, Apr 18, 2022 2:50 pm
Attachments: FLDoE 0328 Legal Notice.pdf (1118K)

Thank you for your interest in pursuing this matter. I have attached the notice I sent to Richard Corcoran, Education Commissioner of Florida on 28 March.

I have reached out to Rep. Carlos Guillermo-Smith's office regarding the 'Q&A' session and any other statements he or any other legislator made on the floor regarding discrimination that would be experienced as a result of this law being enacted. I have also asked about the referenced "standards" in the law.

Respectfully,

Dr. Brian A. Smith
407.457.2800

-----Original Message-----

From: Irier, Lorraine <Lorraine.Irier@ed.gov>
To: Brian Smith, DC <briansmithdc@aol.com>
Sent: Mon, Apr 18, 2022 2:15 pm
Subject: 04-22-4031 FL DOE

Dr. Smith,

Thank you for speaking with me today. I was reviewing your written complaint again and noticed you indicated that you had attempted to resolve these allegations with an institution through an internal grievance procedure.

- Can you please tell me what institution you contacted and if you filed a formal complaint with that institution?
- Also as discussed during our call today, please provide any other information you might have to indicate that the law is discriminatory?
- Do you know of any schools

Please provide the above information by Friday April 22, 2022.

Best,

Lorraine Irier

Attorney

(she/her/Ms.)

pronounced: luh-RAYN IH-ree-ayr

U.S. Department of Education, Office for Civil Rights

Direct Dial: 202-987-1876

From: briansmithdc@aol.com,
To: Lorraine.Irier@ed.gov,
Subject: Re: DO NOT REPLY - LOA #04224031
Date: Tue, Apr 19, 2022 11:35 am
Attachments: FLDoE 0328 Legal Notice.pdf (1118K)

Why yes it is from your office. I thought it was the reply from the FL DOE. I attached the Notice I sent to the Commissioner of the Florida DOE to my first e-mail - which means they did not respond to the Notice. I have attached another copy of that Notice which is addressed to Mr. Corcoran.

In reference to your question about the "Standards" referred to in the Bill signed into law, there is the following on the FLDOE homepage:

"STANDARDS - CPALMS is the State of Florida's official source for standards. All standards for every subject area and grade level can be found here."

Clicking on the link brings you to <https://www.cpalms.org/Public/search/Standard>. I searched the "Standards" for "gay", "lesbian", and "transgender" with there being no results. Since the FLDOE is stating that these are "All standards for every subject area ..." I think it is clear that, in fact, there are no "standards" by which or through which this law can operate effectively since the "Standards" referenced in the law do not appear to actually exist. I also looked through the FLState Board of Education (which operates under FLDOE) "Rules" (<https://web02.fldoe.org/Rules/RulesArchive.aspx>) and found nothing.

I am waiting for a response from FL Rep. Smith's office.

Respectfully,

Dr. Brian A Smith
407.457.2800

-----Original Message-----

From: Irier, Lorraine <Lorraine.Irier@ed.gov>
To: Brian Smith, DC <briansmithdc@aol.com>
Sent: Mon, Apr 18, 2022 3:16 pm
Subject: RE: DO NOT REPLY - LOA #04224031

Mr. Smith,

This is from my office OCR with the US Department of education. Did you file with the FL DOE or any other entity/institution?

Thanks

Lorraine

From: Brian Smith, DC <briansmithdc@aol.com>
Sent: Monday, April 18, 2022 2:53 PM
To: Irier, Lorraine <Lorraine.Irier@ed.gov>
Subject: Fwd: DO NOT REPLY - LOA #04224031

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is the reply I received from the Florida Board of Education.

Dr. Brian A. Smith
407.457.2800

-----Original Message-----

From: Hughes, Lawrence <Lawrence.Hughes@ed.gov>

To: briansmithdc@aol.com <briansmithdc@aol.com>

Sent: Wed, Mar 30, 2022 9:35 am

Subject: DO NOT REPLY - LOA #04224031

RE: Florida Dept of Education | #04224031 | LOA | 03/28/2022

Hello Dr. Smith,

Please find attached, our Letter of Acknowledgement (LOA) of receipt of your complaint, and a copy of our procedure guide. Please review these documents closely as they contain valuable, time-sensitive instructions regarding your complaint against Florida Dept of Education.

Your complaint is now in the Evaluation stage. If you have any other questions or new documents to add, please feel free to submit them to our office email address:

OCR.Atlanta@ed.gov

Please be sure to include your Complaint number. This will ensure your questions and submissions receive the attention they deserve.

Thank you for your patience during this process.

Sincerely,

Lawrence K. Hughes
Program Support Assistant
U.S. Department of Education
[Office for Civil Rights-Atlanta Office, Southern Division](#)
[61 Forsyth St. SW, Suite 19T10](#)
[Atlanta, GA 30303](#)

“Our lives begin to end the day we become silent about things that matter.” – MLK Jr.

From: briansmithdc@aol.com,
To: lorraine.rier@ed.gov,
Subject: Re: FI law complaint
Date: Fri, Apr 22, 2022 4:13 pm

Dear Lorraine,

I have not heard back from my Floridarepresentative's office regarding the transcript of the Q&A session or the "standards" referred to in the law. I will let you know as soon as there has been a response.

I am going to contact the FLDoE and FLBoE to ask them what are the "standards" that are mentioned in the law; I will let you know if they respond and what that response is.

Have a good weekend.

Respectfully,

Dr. Brian A. Smith (ret)
407.457.2800

From: Lorraine.Irier@ed.gov,
To: briansmithdc@aol.com,
Subject: RE: Florida Dept of Education | #04224031 | LOA |
Date: Mon, Apr 25, 2022 7:18 am

Received. Thank you

From: Brian Smith, DC <briansmithdc@aol.com>
Sent: Sunday, April 24, 2022 1:42 AM
To: Irier, Lorraine <Lorraine.Irier@ed.gov>
Subject: Florida Dept of Education | #04224031 | LOA |

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hope you had a wonderful weekend.

I did confirm that a lawsuit has been filed by multiple plaintiffs with Equality Florida as the lead plaintiff. The link below takes you to an online version of the lawsuit. I have attached the lawsuit as a pdf so you do not have to use the link, but, if there are any updates due to court filings they might be accessible at that link.

Hope it helps.

Respectfully,

Dr. Brian A. Smith (ret)

407.457.2800

From: briansmithdc@aol.com,

To: lorraine.ierier@ed.gov,

Subject: Florida Dept of Education | #04224031 | LOA |

Date: Sat, Aug 20, 2022 3:57 am

Attachments: 2022 0725 Cousins et al v Orange CO SN et al _complaint.pdf (332K)

Dear Ms. Iver,

As you know, Equality Florida, et al have filed suit against Florida Governor DeSantis regarding the Don't Say Gay bill that he signed into law on 28 March 2022. That suit may end with the law being disallowed and pursuing the complaint I filed with your office, referenced above, may be pointless.

Another suit recently filed may also impact that law too. I have attached a copy of that suit which was filed on 28 July 2022 for your records to keep track of what arguments have been raised and to know, when decided, exactly what the opinion the Court is.

Respectfully,

Dr. Brian A. Smith (ret)
407.457.2800

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

Case No. 6:22-1312

JENNIFER COUSINS; MATTHEW COUSINS; P.C., M.C., S.C., and N.C., by and through their next friends and parents, Jennifer and Matthew Cousins; WILL LARKINS, by and through his next friend and parent, Ted Larkins;¹ DAVID DINAN; VIKRANTH REDDY GONGIDI; K.R.D. and R.R.D., by and through their next friends and parents David Dinan and Vikranth Reddy Gongidi; and CENTERLINK, INC., on behalf of itself and its members,

Plaintiffs,

vs.

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA; THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA; THE SCHOOL BOARD OF DUVAL COUNTY, FLORIDA; and THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA,

Defendants.

**Challenge to the Constitutionality of
Florida Statute § 1001.42(8)(c)
(2022)**

**Preliminary and Permanent Injunctive
Relief Requested**

Declaratory Relief Requested

Demand for a Jury Trial

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

¹ Pursuant to Fed. R. Civ. P. 5.2(h), Plaintiff Will Larkins, a minor, waives the privacy protections afforded by Fed. R. Civ. P. 5.2(a) as to his name only.

Plaintiffs Jennifer (“*Jen*”) and Matthew (“*Matt*”) Cousins, individually and as next friends and parents of P.C., M.C., S.C., and N.C., minor children; Will Larkins, a minor, by and through his next friend and parent, Ted Larkins; David Dinan and Vikranth Reddy Gongidi (“*Vik Gongidi*”), individually and as next friends and parents of K.R.D. and R.R.D., minor children; and Plaintiff CenterLink, Inc., by and through their undersigned counsel, bring this challenge to Florida Statute § 1001.42(8)(c) (2022) (“*HB 1557*”)² seeking a declaratory judgment and preliminary and permanent injunctive relief against Defendants, the following Florida schools boards: The School Board of Orange County, The School Board of Indian River County, The School Board of Duval County, and The School Board of Palm Beach County.

INTRODUCTION

1. Florida enacted HB 1557 to silence and erase lesbian, gay, bisexual, transgender, queer, and questioning (“*LGBTQ+*”) young people and families. The law is profoundly vague and requires schools to ban undefined broad categories of speech based on undefined standards such as “appropriateness.” The law demands that school districts implement its terms, and it empowers any parent to directly sue the school district if they are dissatisfied with its implementation of the law. And it simultaneously saddles school districts with the cost of litigation and the risk of paying

² Although HB 1557’s provisions have now been codified as part of Florida’s statutory scheme, we refer to this portion of the law by its former bill number for ease of reference. We do not employ the widely-used “Don’t Say Gay” label to refer to this portion of the law, as that moniker fails to recognize the harms HB 1557 intentionally inflicts upon transgender people and others who identify as members of the LGBTQ+ community.

plaintiffs' attorney fees. This vigilante enforcement mechanism, combined with the law's intentionally vague and sweeping scope, invites parents who oppose any acknowledgment whatsoever of the existence of LGBTQ+ people to sue, resulting in schools acting aggressively to silence students, parents, and school personnel. The law, by design, chills speech and expression that have any connection, however remote, to sexual orientation or gender identity.

2. The impact of HB 1557 is immediate and severe. Defendant school boards and their agents have already begun implementing significant changes under the law. They have instructed teachers to review hundreds of books that acknowledge LGBTQ+ people and families and have eliminated vital support systems for LGBTQ+ students, including guidance and training that combat bullying and violence.

3. Plaintiffs Jen and Matt Cousins want their children, including their non-binary seventh grader Plaintiff S.C., to feel safe and supported at school. HB 1557 attacks not only S.C. but the entire Cousins family. All members of the family—including Plaintiffs P.C. and M.C., who are in first and third grades—love and are proud of their family and wish to be able to speak openly about S.C. in school. Jen and Matt want their younger children to be able to complete the same assignments their older siblings did at their age, including a family tree that describes their siblings, without the shame and censorship that HB 1557 has imposed. S.C. fears they will lose the critical lifeline they have found in their school's Gay Straight Alliance ("*GSA*") student group, knowing that parents looking to enforce HB 1557 have already begun to target teachers who sponsor those groups.

4. This law restricts LGBTQ+ students' ability to access life-saving information, including Plaintiff Will Larkins' ability to share the knowledge that helped him understand and love himself. When Will learned about LGBTQ+ people and their history, he finally realized he was not broken or wrong, as his childhood bullies had made him believe. Will knows that sharing knowledge about LGBTQ+ history can empower young people who are struggling. However, after he shared a presentation about the Stonewall riots with his history class just after HB 1557 was passed, he was moved to another history class and his grades suffered as a result. Will has seen anti-LGBTQ+ bullying and harassment increase since HB 1557 was enacted, to such a degree that students have torn pride flags out of fellow students' hands and stomped on them, causing anxiety and fear for Will and his peers. As school districts actively move to rescind guidance and training about compassion and respect for LGBTQ+ people, the risk of such harm will only increase.

5. HB 1557 also sends a message to the children of same-sex parents that they should be ashamed of their families. Plaintiffs David Dinan and Vik Gongidi want their third and fourth graders, R.R.D. and K.R.D., to feel supported and safe at their school. They also want their children to be able to speak about their family at this critical age when family is often a topic of discussion. But HB 1557 places a barrier to that most basic goal. For example, when David recently chaperoned a field trip with K.R.D.'s class, he censored himself in a way he had not before HB 1557's passage. David knew any mention of K.R.D.'s other dad was likely to prompt future questions by classmates that would be silenced under the law, sending a message to his child that

their family is a topic too shameful to be discussed.

6. HB 1557 impacts entire communities of young people, interfering with and putting additional pressure on LGBTQ+ community centers that provide services and support for LGBTQ+ youth. As a result of HB 1557, at least one member center of Plaintiff CenterLink has been impeded from providing the training, referrals, and other support services it has traditionally provided through a collaboration with a school district. When schools eliminate supports for LGBTQ+ youth and fail to provide them a safe environment, it negatively impacts LGBTQ+ students' mental health and increases their need for community services. One of Plaintiff CenterLink's LGBTQ+ community center members has seen its demand for counseling sessions double since HB 1557 was passed, requiring the diversion of resources previously designated for other critical services. Another has increased community advertising to make sure LGBTQ+ youth know there are still safe places and support available, even after HB 1557's enactment.

7. The law silences and stigmatizes LGBTQ+ youth, such as Plaintiffs S.C. and Will Larkins, inviting discipline for the mere act of acknowledging who they are and advocating for themselves and their community. The law tells children and families with LGBTQ+ members that their family is not worthy of acknowledgment and discussion. The intentionally broad law, together with its enforcement scheme, erodes the ability of LGBTQ+ students to obtain affirming support services in school, undermines protections from bullying based on their identities and the structure of their families, and deprives them of literature and resources vital to their development,

education, and mental health. As a result, the law is unconstitutional and the Defendant school boards must be enjoined from enforcing it.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because the action arises under the U.S. Constitution. The Court also has subject matter jurisdiction under 28 U.S.C. § 1343(a)(3) and (4) because the action is brought to redress deprivations, under color of state authority, of rights, privileges, and immunities secured by the U.S. Constitution and laws, and seeks to secure equitable relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

9. The Court has personal jurisdiction over Defendants because Defendants are domiciled in Florida and the deprivation of Plaintiffs' rights arises out of and relates to Defendants' official duties in Florida.

10. Venue lies in this District under 28 U.S.C. § 1391(b)(1) because Defendants School Board of Orange County, Florida, and School Board of Duval County, Florida, reside in this District and all Defendants are residents of Florida. Venue also lies in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

11. Venue lies in this Division under Local Rule 1.04(b) because this action is most directly connected to and most conveniently advanced in this Division.

12. The Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to 28 U.S.C. §§ 2201 and

2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

PARTIES

I. Plaintiffs

13. Plaintiffs JEN and MATT COUSINS, a married different-sex couple of 15 years, reside in Orange County, Florida, with their four children, Plaintiffs P.C. (age 6), M.C. (age 8), S.C. (age 12), and N.C. (age 14). Each of the children attends Orange County Public Schools (“**OCPS**”). Plaintiffs P.C., M.C., S.C., and N.C., minor children, sue pursuant to Federal Rule of Civil Procedure 17(c) by and through their next friends Plaintiffs Jen and Matt Cousins. As students enrolled in OCPS and their parents, Plaintiffs Jen Cousins, Matt Cousins, P.C., M.C., S.C., and N.C. are subject to Defendant School Board of Orange County’s implementation of HB 1557.

14. Plaintiff WILL LARKINS resides in Orange County, Florida. He sues pursuant to Federal Rule of Civil Procedure 17(c) by and through his next friend Ted Larkins. As a student at OCPS, Plaintiff Will Larkins is subject to Defendant School Board of Orange County’s implementation of HB 1557.

15. Plaintiffs DAVID DINAN and VIK GONGIDI, a married same-sex couple, reside in Indian River County, Florida, with their two children, Plaintiffs K.R.D. and R.R.D., who attend the School District of Indian River County (“**SDIRC**”). Plaintiffs K.R.D. and R.R.D., minor children, sue pursuant to Federal Rule of Civil Procedure 17(c) by and through their next friends Plaintiffs David Dinan and Vik Gongidi. As students at SDIRC and their parents, Plaintiffs David Dinan, Vik Gongidi, K.R.D., and R.R.D. are subject to Defendant School Board of Indian River

County's implementation of HB 1557.

16. Plaintiff CENTERLINK, INC. is a mission-driven not-for-profit 501(c)(3) organization and member-based coalition that was founded in 1994 and is based in Fort Lauderdale, Florida. CenterLink's members are LGBTQ+ community centers across the country, whose strength and sustainability CenterLink supports. CenterLink helps build the capacity of its member centers to fulfill their missions of addressing the social, cultural, health, and advocacy needs of LGBTQ+ community members. One of CenterLink's fundamental missions is to help its member centers improve their organizational and service delivery capacity. CenterLink sues on its own behalf and on behalf of affected member centers that operate in Orange County, Duval County, and Palm Beach County.

II. Defendants

17. Defendant School Board of Orange County, Florida, is the governing body of the OCPS, organized and operated under Fla. Stat. §§ 1001.34 through 1001.453. The School Board of Orange County is charged with implementing the terms of HB 1557 as provided in the newly enacted subsection (8)(c) of Fla. Stat. § 1001.42, "Powers and duties of district school board." As a political subdivision of the State of Florida, the School Board of Orange County is subject to civil suits pursuant to Fla. Stat. § 1001.41(4) and is a "person" acting under color of state law within the meaning of 42 U.S.C. § 1983. Plaintiffs P.C., M.C., S.C., and N.C., and Plaintiff Will Larkins attend public school in Orange County. A member center of Plaintiff CenterLink provides services to LGBTQ+ students in OCPS.

18. Defendant School Board of Indian River County, Florida, is the governing body of the SDIRC, organized and operated under Fla. Stat. §§ 1001.34 through 1001.453. The School Board of Indian River County is charged with implementing the terms of HB 1557 as provided in the newly enacted subsection (8)(c) of Fla. Stat. § 1001.42, “Powers and duties of district school board.” As a political subdivision of the State of Florida, the School Board of Indian River County is subject to civil suits pursuant to Fla. Stat. § 1001.41(4) and is a “person” acting under color of state law within the meaning of 42 U.S.C. § 1983. Plaintiffs K.R.D. and R.R.D. attend public school in Indian River County.

19. Defendant School Board of Duval County, Florida, is the governing body of the Duval County Public School District (“**DCPS**”), organized and operated under Fla. Stat. §§ 1001.34 through 1001.453. The School Board of Duval County is charged with implementing the terms of HB 1557 as provided in the newly enacted subsection (8)(c) of Fla. Stat. § 1001.42, “Powers and duties of district school board.” As a political subdivision of the State of Florida, the School Board of Duval County is subject to civil suits pursuant to Fla. Stat. § 1001.41(4) and is a “person” acting under color of state law within the meaning of 42 U.S.C. § 1983. A member center of Plaintiff CenterLink provides services to multiple schools and students in DCPS.

20. Defendant School Board of Palm Beach County, Florida, is the governing body of The School District of Palm Beach County (“**SDPBC**”), organized and operated under Fla. Stat. §§ 1001.34 through 1001.453. The School Board of Palm Beach County is charged with implementing the terms of HB 1557 as provided in the

newly enacted subsection (8)(c) of Fla. Stat. § 1001.42, “Powers and duties of district school board.” As a political subdivision of the State of Florida, the School Board of Palm Beach County is subject to civil suits pursuant to Fla. Stat. § 1001.41(4) and is a “person” acting under color of state law within the meaning of 42 U.S.C. § 1983. A member center of Plaintiff CenterLink provides services to LGBTQ+ students in SDPBC.

FACTUAL ALLEGATIONS

I. HB 1557’s Requirements and Enforcement Structure

21. HB 1557, which took effect on July 1, 2022, provides that “[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.” Fla. Stat. § 1001.42(8)(c)(3).

22. HB 1557 also imposes the following requirements and limits upon district school boards:

(c)(1). In accordance with the rights of parents enumerated in ss. 1002.20 and 1014.04, adopt procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage a student to discuss issues relating to his or her well-being with his or her parent or to facilitate discussion of the issue with the parent. . . .

(c)(2). A school district may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being. This subparagraph does not prohibit a school district from adopting procedures that permit school personnel to withhold such information from a parent if a reasonably prudent person would believe that disclosure would result in abuse, abandonment, or neglect

Fla. Stat. § 1001.42(8)(c)(1)-(2).

23. The law does not define “classroom instruction,” “sexual orientation,” “gender identity,” “school personnel,” “third party,” “age-appropriate,” “developmentally appropriate,” “standards,” or “well-being.”

24. HB 1557 provides two enforcement mechanisms for parents who are unsatisfied with any school district’s handling of speech, expression, and information concerning sexual orientation and gender identity. Subsection 8(c)(7) provides for a parent to wait merely 30 days after notifying the district of any concern that falls under the law and then, if the concern is not resolved, authorizes parents to either: (1) request the assignment of a special magistrate to investigate the parent’s claims and make a recommended decision to the State Board of Education for resolution, or (2) exercise a new private right of action to sue their child’s school district for declaratory and injunctive relief if they believe the law is being violated. Fla. Stat. § 1001.42(8)(c)(7).

25. The law places the burden of paying the costs of the special magistrate

process on the school district. Fla. Stat. § 1001.42(8)(c)(7)(b)(I). And it provides that, if a parent's lawsuit is successful, the school district may be required to pay a monetary award in addition to mandatory attorney fees and court costs. Fla. Stat. § 1001.42(8)(c)(7)(b)(II). HB 1557's enforcement scheme poses little risk for parents who desire to litigate against their child's school district, and it incentivizes school districts to bend to any single parent's demands rather than to prioritize student safety and education.

26. Section 2 of HB 1557 states that “[b]y June 30, 2023, the Department of Education shall review and update, as necessary, school counseling frameworks and standards; educator practices and professional conduct principles; and any other student services personnel guidelines, standards, or frameworks in accordance with the requirements of this act.” Although parents are empowered to sue at any time, there is no indication which “state standards” will apply before these standards are developed.

II. HB 1557's vague language restricts such a broad range of discussion as to be infeasible.

27. HB 1557's vagueness inevitably has led to, and continues to lead to, discriminatory and arbitrary application and enforcement across various school districts. As noted above, the law fails to define numerous terms that are integral to its scope, including “classroom instruction,” “third parties,” “sexual orientation,” “gender identity,” “age-appropriate,” and “developmentally appropriate.” These terms and concepts are fundamental to understanding the confines of the statute, yet

are open to numerous interpretations. The failure to define them results in confusion for anyone tasked with following the law.

28. It is also unclear who the law binds. The law restricts “classroom instruction” by “school personnel or third parties.” It is unclear whether parents or students are “third parties” whose discussion of their own sexual orientation on school grounds could constitute instruction.

29. The forbidden subjects of instruction are equally unclear. Without a definition of “sexual orientation” in the law’s text, it is unclear whether it prohibits an assignment to draw a family tree or a kindergarten teacher reading her class a book that references a character’s “mommy” and “daddy.” Because sexual orientation and gender identity infuse all family and romantic relationships, references to “brother,” “aunt,” or “wife” can communicate information about gender identity or sexual orientation. It is unclear whether HB 1557 prohibits the mention of a non-binary family member, or whether a high school student can offer a class presentation about LGBTQ+ historical events or historical or current public figures, regardless of whether the figures are known for achievements unrelated to their sexual orientation or gender identity.

30. Because the law does not define “gender identity,” a reasonable person cannot tell what type of instruction is prohibited.³ Every person has a gender identity,

³ Defendant school districts are already implementing inconsistent definitions for these terms. For example, at least one DCPS documents defines sexual orientation in terms of attraction to others and gender identity in terms of self-perception. On the other hand, at least one OCPS document defines

whether or not it corresponds with their sex assigned at birth. It is unclear whether HB 1557 bans a discussion on stereotypical gender roles or gender expression. For example, it is not clear whether a kindergarten teacher can still read the class a book where Jane wants to play football. Even if this is permitted, a reasonable person cannot tell where to draw the line. Surely HB 1557 was not intended to ban all use of pronouns or gendered terms for people. But the law on its face does not answer, for example, whether transgender students may request the use of accurate pronouns by teachers and other students in the classroom, particularly if such a change may require explanation to other students in the class.

31. The law also fails to clarify what constitutes “classroom instruction.” The preamble to HB 1557 frames the law broadly as “prohibiting classroom discussion about sexual orientation or gender identity” by any “school personnel.”

32. Whether a teacher can answer a student’s question about another student’s family structure without running afoul of the law is unclear. The law is vague, leaving school districts to decide whether or not teachers and classroom visitors, such as parents, must refrain from answering students’ questions on the forbidden topics—to the extent those can even be ascertained. Similarly, it is unclear whether a teacher must censor students from discussing their own sexual orientation or gender identity, or that of their LGBTQ+ parents, family members, or friends, and whether or not to discipline those students who do.

sexual orientation in terms of self-identity and gender identity in terms of behavior that can be shown through evidence.

33. Florida’s K-3 board-approved state education standards are replete with examples of assignments requiring instruction and discussion of family structures, familial relationships, historical individuals, and proper pronoun usage.⁴ For example, a kindergarten theater standard requires students to “create a story about an everyday event involving family members and/or pets using body movements, sounds, and imagination.”⁵ A kindergarten social studies standard asks students to “compare children and families of today with those in the past.”⁶ A first grade social studies standard requires students to “create a timeline based on the student’s life or school events, using primary sources.”⁷ The standard suggests examples of primary sources including “photographs, birth certificates, ... and diaries.”⁸ English standards in grades 1-3 all require students demonstrate increasing awareness and use of proper pronouns.⁹ A kindergarten English standard asks students to “describe familiar people ... and, with prompting and support, provide additional detail.”¹⁰ HB 1557’s vague and

⁴ “CPALMS is the State of Florida’s official source for standards.” Florida Department of Education, Standards & Instructional Support, available at <https://www.fldoe.org/academics/standards/>.

⁵ CPALMS, Standards, Theater Standard TH.K.C.1.1, available at <https://www.cpalms.org/PreviewStandard/Preview/4210>.

⁶ CPALMS, Standards, Social Studies Standard SS.K.A.2.1, available at <https://www.cpalms.org/PreviewStandard/Preview/2879>.

⁷ CPALMS, Standards, Social Studies Standard SS.1.A.3.2, available at <https://www.cpalms.org/PreviewStandard/Preview/2912>.

⁸ *Id.*

⁹ CPALMS, Standards, English Language Arts Standard LAFS.3.L.1.1, available at <https://www.cpalms.org/PreviewStandard/Preview/5926>.

¹⁰ CPALMS, Standards, English Language Arts Standard LAFS.K.SL.2.4, available at <https://www.cpalms.org/PreviewStandard/Preview/5855>.

overbroad terms chill the participation of children with same-sex parents or transgender or non-binary family members in such assignments.

34. These questions arise even if “classroom instruction” is limited to the designated classroom and class time. But without a definition, it is not clear that “classroom instruction” is so limited. HB 1557 chills and censors speech between individual students, parents, and school personnel in numerous contexts, including during extracurricular activities, such as student-led GSAs and other clubs.

35. HB 1557 creates uncertainty about the extent to which library books must also be policed because they may constitute “classroom instruction.” The law has already caused Defendant school districts in at least Orange County and Palm Beach County to remove LGBTQ+ materials from their libraries. A policy adopted by Defendant School Board of Palm Beach County places library media specialists on the committee to review parent complaints under HB 1557, indicating that it deems library materials to fall within the scope of the law.

36. HB 1557 chills schools from responding effectively to bullying based on a student’s sex, sexual orientation, and gender identity. For example, in the proposed revision it made to its LGBTQ+ student support guide in response to HB 1557, DCPS removed guidance to teachers on how to respond to anti-LGBTQ+ bullying, including sample responses to students using “gay” as an insult. DCPS also has removed for legal review an anti-bullying video that taught middle and high school students how to support their LGBTQ+ peers and create a safe environment. SDPBC likewise has removed from its website a support guide for LGBTQ+ students that contained similar

anti-bullying language and, on information and belief, is currently in the process of revising the guide due to HB 1557.

37. For grades other than K-3, the law restricts instruction where not “age-appropriate or developmentally appropriate.” These terms are not defined, and no standards or guidance is due until June 30, 2023. Until then, schools are incentivized to chill and censor speech, expression, and access to information according to the standard of the parent most hostile to the existence of LGBTQ+ people, simply to avoid a lawsuit.

38. The law is vague as to whether a student merely discussing their sexual orientation with their teacher constitutes a “change in the student’s services or monitoring related to the student’s mental, emotional, or physical health or well-being and the school’s ability to provide a safe and supportive learning environment for the student.” The phrase includes multiple terms that are undefined and unclear, including “well-being,” which is used repeatedly throughout subsections 8(c)(1) and 8(c)(2).

39. On June 15, 2022, Defendant School Board of Palm Beach County adopted Policy 5.735 implementing HB 1557. Despite the vagueness of various terms described above, including “classroom instruction,” “sexual orientation,” and “gender identity,” Policy 5.735 does not define those terms. Instead, it inserts additional vagueness by subjecting employees to disciplinary action for “attempt[ing] to encourage” a student to withhold information from their parents. Teachers in Palm Beach County schools have already been instructed to review all classroom books and remove any that instruct on sexual orientation or gender identity for grades K-3 and

any that are not age or developmentally-appropriate for grades 4-12, including those about which the teacher is “unsure.” A member of Defendant School Board of Palm Beach County stated that avoiding litigation from parent complaints is one of the district’s “biggest concerns” because they need “to be fiscally responsible.”¹¹ On information and belief, a SDPBC administrator who questioned the decision to remove books before standards were put in place has been transferred and demoted.

III. HB 1557 was enacted to shame and silence LGBTQ+ children and families, stigmatizing them, subjecting them to adverse treatment, and barring them from full and equal participation in their school communities.

40. HB 1557’s purpose is to silence LGBTQ+ people and their families based on their identities and the content and viewpoint of their speech and expression. The law’s sponsor in the Senate stated that the law addresses concerns about students “coming out” as LGBTQ+ in school, and parents’ concerns about a “departure [from] core belief systems and values.”

41. HB 1557’s imprecision exacerbates its chilling effect, pushing school districts to broadly restrict speech about LGBTQ+ students and families under threat of private lawsuits and accompanying expenses.

42. Unsuccessful amendments show that the legislature intentionally failed to clarify the vague terms used in the bill and intended to target the LGBTQ+ community. Most tellingly, proposed Amendment 973790 would have replaced “sexual orientation” and “gender identity” with “human sexuality” and “sexual

¹¹ See <https://www.wlrn.org/education/2022-06-09/palm-beach-county-teachers-are-being-told-to-review-classroom-library-books-for-references-to-racism-sexism-oppression>.

activity.” Its sponsor clarified that the amendment was designed to avoid discrimination against LGBTQ+ children: “If the intent of this bill isn’t to marginalize anyone, let’s make sure we aren’t by passing this amendment.” As one colleague noted: “The other advantage to the senator’s amendment is that it takes out the words that target a minority group. . . . We do not want children and others to get the impression we think it is wrong to be gay or to be transgender.” Critically, HB 1557’s sponsor in the Senate stated that the amendment should not be supported because it “would significantly gut the effort of the bill.” The amendment failed.

43. Amendments 734244 and 600607 proposed clarifying that HB 1557 “does not apply to any discussion between a student who identifies as transgender, gender nonconforming, non-binary, or otherwise LGBTQ and their peers.” The amendments failed. And amendment 290096, which would have defined “sexual orientation” and “gender identity” to clarify that the terms encompass identities other than LGBTQ+ identities, such as heterosexuality, also failed.

44. Amendment 755282 would have limited the definition of “classroom instruction” to exclude discussions of family structures, objective historical events, and bullying prevention; student IEP or 504 plans; facilitating discussion between students; and asking and answering questions by students. The amendment failed.

45. HB 1557’s nebulous and overbroad terms achieve the intended, discriminatory goal of erasing all mention of LGBTQ+ people and families in schools. HB 1557 creates lose-lose situations for parents, teachers, and students. A school either can avoid any conversation acknowledging LGBTQ+ people or face a lawsuit by any

parent hostile to the presence of LGBTQ+ students and families.

46. In practice, HB 1557 tells all children that there are certain subjects about which they cannot learn, and it tells all people that LGBTQ+-identifying people are not human beings worthy of acknowledgment and discussion. It interferes with the ability of LGBTQ+ students to obtain affirming support services in school, undermines protections from bullying based on their identities and the structure of their families, and deprives them of literature and resources vital to their development, education, and mental health.

IV. HB 1557 harms Plaintiffs by impermissibly chilling speech and expression, obstructing communications, sowing confusion, depriving young people of vital support services, and stigmatizing children.

1. HB 1557 has harmed and will continue to harm Plaintiffs Jennifer and Matt Cousins, and Plaintiffs P.C., M.C., S.C., and N.C.

47. Jen and Matt Cousins have been married for over 15 years and are the parents of four children. Jen is a full-time mom and Matt is a software architect at Sapiens. The family lives in Orlando, Florida.

48. Jen and Matt's children are N.C., who is 14 years old and is a rising ninth grader; S.C., who is 12 years old and is a rising seventh grader; M.C. who is 8 years old and is a rising third grader; and P.C., who is 6 years old and is a rising first grader. Each of the children attends school in OCPS.

49. Jen and Matt have raised their children to be kind, open-minded, respectful of differences, and comfortable in their own skin. More than anything, they want their children to feel safe and supported—not only at home, but in all aspects of

their lives, including at school.

50. Jen and Matt's child, S.C., came out as non-binary last year, and uses "they/them" pronouns. The family supports S.C. completely, and loves that S.C. is comfortable in their own skin and confident in who they are. S.C. is completely "out" at school and is an active member of their school's GSA student club. The GSA has been a lifeline for S.C. at school, and provides a sense of belonging, community, and acceptance for S.C. and other LGBTQ+ students. S.C. has friends who do not have any other space in which they safely can be themselves outside of the GSA.

51. An OCPS document recently utilized in training at the school district, "Legislative Updates May 2022," instructs staff that library "books that make written or pictorial reference to sexual orientation or gender identity should not be available to K-3 students to browse or check out" and further states that "hundreds" of materials will need to be reviewed. An OCPS document titled "Legislative Media Center Changes," states that "we encourage elementary media specialists to conduct a review of books available to students in grades K through 3, making note of any books that include written or pictorial references to sexual orientation or gender identity." An OCPS document titled "Instructional Materials Library Media 2022 Legislation" poses the question: "A book is used for instructional purposes to teach about families. The book includes references and pictures of a family with two moms and two dads. Since the lesson is about families and not sexual orientation or gender identity, is it okay to use that book?" It answers: "Book can be viewed as introducing sexual orientation to K-3 kids if it is used as part of instruction in K-3."

52. Jen and Matt wish their children to continue to be able to access information that depicts diversity and literature that reflects their lived experiences. For example, they want S.C. and their siblings to be able to seek out a book in a school library that contains a non-binary character, so that they can better understand that S.C. is not alone. Jen and Matt have always fostered empathy and inclusivity in their children, and they want their children to learn in school the importance of representation, especially for people from marginalized communities. They have witnessed how the passage of HB 1557 has increased demands from members of their community to erase LGBTQ+ voices and stories from the literature currently available to young people in their schools.

53. HB 1557 attacks not only S.C. but the entire Cousins family. All members of the family are proud of S.C. and wish to be able to speak openly and with love for S.C. in school, including by explaining S.C.'s non-binary identity to friends, classmates, teachers, and others. S.C. wishes to advocate for themselves and asks to have others refer to them with they/them pronouns. The law paints their family as abnormal. The law shames, chills, and silences such communications; and it portrays S.C., a kind and thoughtful child, as someone who should be feared or ostracized. For example, given the uncertainty of HB 1557, Jen and Matt's youngest children, Plaintiffs P.C. and M.C., who are in first and third grade, are afraid they will get in trouble for speaking about their own sibling in class and explaining their sibling's identity and pronouns. P.C. and M.C. are also afraid their teacher will not be able to support their speech by answering other student's questions about their sibling's

identity and pronouns, leaving them open to bullying for having an LGBTQ+ family member.

54. Jen and Matt proudly display and preserve the school projects and artwork completed by their children, and in looking over the beautiful keepsakes from S.C. and N.C.'s K-3 years, they realize that P.C. and M.C. may not be able to complete the same kinds of assignments. For example, S.C. completed a family tree in kindergarten that included pictures and details about their family members, and a first-grade project, "About [S.C.]," that stated "I have 1 sister and 2 brothers." Jen and Matt worry what their two youngest children will be prohibited from sharing in a similar assignment, because S.C. is neither their "sister" nor their "brother." A first-grade assignment asked N.C. "Who is worth more to you than gold?" N.C. drew pictures of mom, dad, M.C., and S.C. The K-3 curriculum is full of instruction on and discussion about family, and Jen and Matt do not want their two youngest children to be excluded from the benefits of these assignments and discussions due to the censorship imposed by HB 1557.

55. For Plaintiff S.C., HB 1557 sends a particular message of shame, telling them that there is something so wrong with them that they and their identity cannot be discussed in a classroom setting. Internalizing this message at such a young, formative age results in profound stigma and dignitary harm.

56. For Plaintiffs M.C. and P.C., HB 1557 tells them that their sibling is someone who cannot be spoken about at school, that their sibling is wrong for who they are, and that they should be ashamed of their family. This is contrary to

everything that Jen and Matt have raised them to understand, and antithetical to the values that they, as parents, have instilled in their children.

57. Jen and Matt are concerned the law will require them to explain to their two youngest children why their teacher may have to shut down conversations about their non-binary sibling while permitting conversation about other siblings. This concern has grown as documents and guidance from the school district have continued to surface. For example, a recent training for OCPS staff “recommended that the safe space stickers be removed from K-3 classrooms so that classroom instruction did not inadvertently occur on the prohibited content of sexual orientation or gender identity.” Similar guidance was provided regarding teachers with same-sex partners displaying family photos and teachers’ clothing with affirming or “pride” messages, focusing on teachers avoiding anything that may elicit prohibited discussion on sexual orientation or gender identity.

58. S.C. witnessed a marked increase in bullying at school before the end of the 2021-2022 school year, which has continued outside of school over the summer, including against one of their transgender friends. S.C. has stayed up late in recent weeks on the phone providing support and being a safe space for their friends who do not have a safe space at home to be themselves. S.C. wonders how, if at all, they will be able to support their LGBTQ+ friends in school. S.C. fears that if they ask a teacher to address anti-LGBTQ+ bullying in the classroom and the teacher is unable to address the bullying, the bullies will feel validated and the bullying will get worse.

59. S.C. and N.C. do not feel that their schools will be safe this year,

particularly if schools can no longer allow GSAs to function (because they require teachers to serve as sponsors) or affirming and welcoming items such as safe space stickers and LGBTQ+ inclusive library materials. Removal of the stickers is also likely to embolden those students, and even parents, who seek to harass them or do them harm. On information and belief, a group of anti-LGBTQ+ parents has requested the names of every GSA club sponsor at public schools in the state of Florida, including those in the OCPS, to weaponize HB 1557 to get those teachers fired.

60. Teachers have always been one of the most valuable and important resources for S.C., N.C., P.C., and M.C. Jen and Matt know that HB 1557 is creating a barrier to building positive relationships and interactions between their children/themselves and the teachers tasked with educating their children. Their two youngest, M.C. and P.C., have already expressed concerns about getting in trouble themselves, as well as “getting their teachers in trouble” by talking about their non-binary sibling in classroom settings. Without safe space stickers, M.C. and P.C. do not know which teachers would be supportive resources for them at school.

2. HB 1557 has harmed and will continue to harm Plaintiff Will Larkins.

61. Will is a rising senior at Winter Park High School in Orange County, Florida, a part of the OCPS. He identifies as gay and non-binary and is the president and a co-founder of his school’s Queer Student Union.

62. Will knew from a very young age that he was different from other boys his age, and he struggled for acceptance both internally and externally with his peers. Will lacked the language to understand what it was about him that made him different.

He was not familiar with the concepts of sexual orientation or gender identity and expression that would help him understand why he felt the way he did. By the fourth grade, he was convinced that he was broken. He did not know how to respond or defend himself when he was bullied by other kids, and because he did not know anyone who shared his experience, he assumed that what the bullies said about him was true.

63. Will came to understand what LGBTQ+ meant the summer before seventh grade. With that life-changing understanding came the language to describe this critical aspect of his identity and the realization that he was not alone in the way that he felt. He finally believed that he was not abnormal or wrong, that he was not a tragic anomaly or a strange fluke that needed to be fixed. It was as if a weight was lifted off his shoulders. Will then became fascinated with learning about LGBTQ+ history and culture, and the more he learned about other people's experiences, the more he came to understand himself and to love himself. Through education on these concepts, he developed a sense of self-worth, community, and belonging.

64. After enactment of HB 1557 this past spring, Will's history class was studying pivotal historical events from the 1960s and early 1970's. Will asked his teacher if the class was going to learn about Stonewall, an uprising of LGBTQ+ people in New York City in 1969 that is commonly understood to mark the beginning of the modern LGBTQ+ civil rights movement. His teacher responded that she was not familiar with Stonewall. Will created and delivered a Google Slides presentation on the Stonewall riots to his class on the significance of the uprising to LGBTQ+ history.

Will's friend, who was also a student in the class, filmed the presentation. The video of Will's lesson went viral on social media, and an article about it was published in a national news outlet.

65. After the news story was published, Will's history teacher complained to administrators. School officials then placed Will under "investigation" for the presentation on the Stonewall Riots. Ultimately, he was told that he was being moved to another history class, and that he had no choice in the matter. Given that it was close to the end of the year and moving into a new and unfamiliar class so close to finals was challenging, Will's grades suffered in the new class as a result. Will's friend also was disciplined for filming his presentation.

66. Will also has witnessed an increase in anti-LGBTQ+ bullying and harassment since the enactment of HB 1557. Will hung up a banner that read "PRIDE BELONGS HERE" ahead of a student-organized protest opposing HB 1557, and within a day it had been vandalized and torn in several places. Further, during a student-organized walk-out, for which Will had sought and obtained permission from the principal in advance, a student walked up and tore a pride flag out of the hand of another student and ripped it up. A second student stomped on a pride flag they took from another student who had been holding it. Will feels less safe at his OCPS school as a result of HB 1557.

67. As President of the Queer Student Union, Will has spoken to his fellow club members about how they feel in light of HB 1557. Many have expressed feelings of depression, anxiety, and fear, not only because of the law but also the hateful and

painful rhetoric being spewed by the Florida Legislature. Will believes the rhetoric perpetuated by the state in support of this bill, including the Governor's Press Secretary calling it the "Anti-Grooming Bill" and stating that those opposed to the bill, like Will, support "the grooming of 4-8 year old children," is being mimicked by students who are increasing their bullying of and hostility toward LGBTQ+ students.

68. Will wants to be himself in school. He wants to talk about LGBTQ+ history without fear of being penalized again. As a rising senior with college prospects on the horizon, Will cannot afford to be disciplined and have his grades suffer for speaking accurately in class about relevant LGBTQ+ historical and current events. He wishes to acknowledge to other students, to teachers, and to his community that he is queer. He wants to go to school and not be shamed and silenced simply for who he is. HB 1557's enactment, and its implementation by Defendant School Board of Orange County, have chilled and penalized Will's speech and expression based on its content and viewpoint, and subjected him and other LGBTQ+ students at OCPS to increased harassment, bullying, and discrimination.

69. Teachers have been one of the most wonderful resources for Will and for other LGBTQ+ students who are struggling to find their place at school. One supportive teacher can make all the difference, as Will experienced when his teacher comforted him regarding an incident at a Halloween party where his male classmates threatened him with physical violence and shouted homophobic slurs. The teacher provided safety for Will at school when he most needed it, and Will fears that under HB 1557, LGBTQ+ students like himself will be deprived of this safety as teachers will

have to actively censor themselves to avoid potential conflicts with anti-LGBTQ+ parents.

3. HB 1557 has harmed and will continue to harm Plaintiffs David Dinan, Vik Gongidi, and Plaintiffs K.R.D. and R.R.D.

70. David and Vik are both physicians and met during their residency training in Michigan. After several years together, they married and have now been legally married for 8 years, although they had their own private commitment ceremony 12 years ago. The freedom to marry under Florida law was a defining moment for them in being officially recognized in the same way as other couples.

71. David and Vik decided to take the first formal steps toward having children in 2011, after having discussed it for some time. Both had always known they would be parents when the time was right. For David, having a family seemed a natural extension of his work as a pediatric radiologist. Vik grew up in a large extended family and starting his own family also seemed a natural and logical extension. They began the process while living in Pennsylvania and continued their adoption journey after moving to Florida.

72. In 2013, David and Vik adopted K.R.D., who is currently 9 years old. In 2014, they adopted R.R.D., who is currently 8 years old. They have had K.R.D. in their family from approximately 4 months old and R.R.D. from a few days old.

73. K.R.D. is currently entering fourth grade and R.R.D. is entering third grade. Both attend public school in the SDIRC.

74. David and Vik want their children to feel supported and safe at their

school. David is a member of the parent-teacher association (“*PTA*”) at the children’s school. David and Vik are in regular contact with their children’s teachers and attend periodic school board meetings.

75. David recently chaperoned K.R.D.’s third grade field trip and plans to chaperone future trips. HB 1557 caused him to self-censor by taking care not to mention K.R.D.’s other dad, Vik. From their experience at school board meetings, David and Vik know that some parents interpret discussions of “sexual orientation” to include neutral acknowledgements of any person that is not heterosexual. Therefore, David realized that reference to K.R.D.’s other dad could invite questions from K.R.D.’s classmates that will put him, K.R.D., or a teacher in a position to run afoul of HB 1557 by explaining the family’s structure. He did not want K.R.D. to witness a teacher struggle with a response, silence K.R.D.’s classmates, or be penalized for affirming K.R.D.’s family, so he censored himself. The chill, shame, and stigma caused by HB 1557 harms David and Vik, in addition to their children.

76. Even if K.R.D. and R.R.D. were allowed to reference the fact that they have two dads, and that their dads are gay, HB 1557 nonetheless restricts a teacher’s ability to answer questions by classmates the way they would about another child’s family, explain that their family is as worthy as any other family, and protect K.R.D. and R.R.D. from feeling alone, ashamed, exposed, and bullied as a result of their family structure. HB 1557 harms their children, sending a message that their family is a topic too shameful or “inappropriate” for their teachers and classmates to discuss.

77. David and Vik now self-censor their appearance and speech around

teachers and classmates of K.R.D. and R.R.D. and when they attend school events, avoiding reference to their relationship, sexual orientation, and any other topic that might be deemed “inappropriate” by parents that could threaten to sue the school under HB 1557. For example, David recently realized while picking up K.R.D. from school that he was wearing a t-shirt celebrating aviation that could be interpreted as a “Pride” t-shirt because it featured rainbow colors, and he felt uncomfortable as a result of HB 1557. He felt conspicuous because he did not want to prompt discussion of his sexual orientation and family structure that would be prohibited by HB 1557. Therefore, he is chilled from wearing clothing explicitly celebrating Pride on school grounds.

78. Based on David’s experience and involvement at previous school board meetings, he is particularly worried about the way this law causes censorship of materials from K.R.D. and R.R.D.’s schools because of the content and viewpoint of these materials. For example, there was a recent effort by parents in his children’s school district to ban over 150 books, including those that mentioned LGBTQ+ people. Before HB 1557, the school district was able to hear those concerns, undertake its review, and then decide that nearly all of those books—although described by some parents as “pornography”—were appropriate for school. But under HB 1557, the most extreme of those same parents may censor school instruction and books by threatening legal action for the inclusion of anything they deem “inappropriate,” forcing schools to adopt a standard of complete LGBTQ+ erasure to avoid costs and liability. K.R.D. and R.R.D. deserve to be able to access books that show that other children their age

also have same-sex parents and David and Vik want them to be able to access those books in school.

79. The enactment of HB 1557 already has impacted the way in which mental health support services have been delivered to K.R.D. and R.R.D. Since the passage of HB 1557, David has observed that school counselors are seeking additional permission from him before interacting with his children, and he worries that his children cannot access timely and appropriate services the way they have previously been able to do.

80. HB 1557 harms David and Vik and their children for the additional reason that the law inhibits school officials' ability to respond effectively to anti-LGBTQ+ bullying and slurs targeting their children because their dads are gay and comprise a married same-sex couple.

81. HB 1557 prevents school officials from protecting students effectively because any reasonably supportive intervention may be characterized as violating the vague and overly broad law, inviting lawsuits by private parties. This makes it less safe for their children to attend school. At its May 2022 meeting, as a result of HB 1557, Defendant School Board of Indian River County discussed proposals from at least one board member to completely rescind an LGBTQ+ Administrative Resource Guide that, since at least the 2019-2020 school year, has provided guidance to school administrators in establishing safe and inclusive schools and promoting academic success for LGBTQ+ students. The SDIRC Superintendent stated at the board's May 2022 meeting that he would bring proposed changes back before the school board by

July 2022, and each month thereafter until a revised document is created in light of the new legislation.

4. HB 1557 has harmed and will continue to harm Plaintiff CenterLink and its member centers.

82. CenterLink's mission is to strengthen, support, and connect LGBTQ+ community centers. CenterLink works to develop strong, sustainable community centers that provide LGBTQ+ people of all ages with the building blocks of well-being that all people need to thrive, such as healthy social connections, safe places to live and work, support to do well in school and prepare for careers, enriching cultural experiences, and timely health and mental health services. With over 300 member LGBTQ+ community centers across the country and internationally, including 27 in Florida, CenterLink assists newly forming community centers and helps strengthen existing centers through networking opportunities for leaders, peer-based technical assistance and training, and a variety of capacity-building services. CenterLink's efforts are based on the belief that LGBTQ+ community centers lay the foundation for a national movement working to ensure that all LGBTQ+ people can live happy and healthy lives in communities that honor and support them.

83. LGBTQ+ community centers work very closely with their LGBTQ+ constituency and engage community leaders and decision-makers. These centers are often the only staffed non-profit LGBTQ+ presence in a given area and the first point of contact for people seeking information, coming out, accessing services, or organizing for social change. According to CenterLink's survey of LGBTQ+ centers,

over 60% provide some direct health services (including counseling, peer-led programs, and support groups, as well as physical health and other mental health services). At the same time, those centers remain thinly staffed: over 30% operate solely with volunteers, and over 60% employ five or fewer paid staff. CenterLink's members pay a sliding-scale membership fee. Once a center becomes a member, it has access to services such as the CenterLink resource portal, newsletter, programming and listservs, annual leadership and staff conferences, and professional advice about operation and services.

84. Since passage of HB 1557, CenterLink has responded to an increased volume of calls for assistance from multiple Florida member centers requesting assistance in interpreting and responding to HB 1557. As a result, CenterLink staff have spent an average of four to eight hours per week since the passage of HB 1557 responding to member inquiries and creating educational materials about the law.

85. If CenterLink staff did not have to spend time responding to inquiries about HB 1557 and helping member centers respond to its implementation, they would use those resources serving other member centers by connecting member centers with lawmakers, planning advocacy trainings, working on a healthcare enrollment awareness project, contributing comments to federal rulemaking processes, or reaching out to members to join their advocacy efforts.

86. Among the services provided to member centers by CenterLink is YouthLink, a program that assists, supports, and strengthens member centers' youth programs in various ways. YouthLink offers networking opportunities for youth center

leaders and youth program staff, peer-based technical assistance and training, webinars on a variety of topics of interest to youth programming staff, a monthly resource e-newsletter, a member portal with documents, and templates. It also provides other practical assistance, including coaching and consultation for youth programming staff, needs assessment research, and a safe chat space for LGBTQ+ youth facilitated by staff at CenterLink and member centers nationwide. CenterLink receives funding from federal subcontracts, individual and corporate donors, and private foundations to support this work.

87. An important aspect of CenterLink's mission is to strengthen its member centers' ability to support and empower LGBTQ+ youth, which member centers accomplish in part by communicating to young people that they are loved and supported, affirmed in their identities, confident in their future, and that they are valued assets in their communities. Many of CenterLink's member centers—including multiple centers in Florida—offer youth programs that bring LGBTQ+ teens together to create safer schools, support one another, build future leaders, and to have fun. These member centers also provide mental health services and resources to LGBTQ+ youth. When a youth seeks support from a member center, staff at the center provide the young person with support, resources, and information. Member centers also receive a combination of public funding, individual and corporate donations, and financial support from private foundations.

88. Some of CenterLink's member centers, including at least one Florida member center, also assist school districts on policies and procedures to prevent

bullying, including bullying based on students' LGBTQ+ identities. Multiple centers provide trainings in schools and facilitate the development and functioning of GSAs, which are youth-led organizations that seek to create safe spaces for LGBTQ+ youth and address anti-LGBTQ+ harassment, bullying, and discrimination in schools. Member centers act as a resource for students and teacher facilitators, which can include assisting with training and meeting facilitation, providing micro-grants for GSA events and materials, offering trainings for interested parents of LGBTQ+ youth on topics including how to provide a safe and supportive environment, and connecting local GSA youth leaders to national conferences. Many member centers also provide health and wellness services for LGBTQ+ teens, including access to HIV testing, linkage to care as needed, drop-in counseling services, and group support meetings both for LGBTQ+ youth and their families. Certain member centers also offer housing support services for homeless youth, including access to hot meals, shower and laundry facilities, bus passes, computer labs, and one-on-one staff support.

89. When LGBTQ+ youth are unable to feel safe or unable to be themselves at school, they suffer. LGBTQ+ students who are victimized based on their identity are nearly three times more likely to miss school, have lower grade point averages, are twice as likely to report they have no post-secondary education aspirations, and have lower self-esteem and higher rates of depression. These problems can be lessened by practices that foster an affirming learning environment. Youth who have a supportive school environment created by staff and administrators report fewer homophobic or transphobic comments, are more likely to report that school personnel intervene when

issues arise, feel a greater sense of community, and are more likely to graduate high school.

90. Research specifically links the presence of GSAs to greater feelings of school connectedness, positive youth development, and increasing sense of purpose, self-esteem, and agency among LGBTQ+ youth. GSAs also have been linked to improved public health outcomes for school-aged young people, including reduced risk across health outcomes related to HIV and other sexually transmitted infections, violence, illicit drug use and prescription drug misuse, and suicidal ideation. Prevention benefits from the presence of GSAs have been documented for non-LGBTQ+ youth as well as LGBTQ+ youth.

91. HB 1557 already has interfered with, and obstructed work performed by, CenterLink and several of its Florida member centers, frustrating the mission of CenterLink and these member centers, interfering with activities they wish to continue in furtherance of their missions and their obligations under federally-funded contracts, consuming and diverting their resources, and harming the LGBTQ+ youth that they serve.

a. CenterLink member center in Duval County

92. For example, a CenterLink member center in Duval County provides training for parents and teachers on safe and supportive environments for LGBTQ+ students; assists DCPS on policies and procedures for student support and anti-bullying; communicates with and provides support to GSAs and their advisors; and supports individual students directly referred from staff at DCPS. This center is

subcontracted by Defendant School Board of Duval County to perform these services under a federal collaborative grant, and private donors and foundations provide additional funding support for its work.

93. Before passage of HB 1557, CenterLink's Duval County member center received several referrals of students throughout the year from DCPS. Within the first few weeks after HB 1557 was passed, DCPS blocked at least one youth referral because the DCPS staff feared the referral might run afoul of HB 1557. Consequently, the center's staff were unable to follow up with this student, provide information, answer questions, and offer resources and assistance. Indeed, since passage of HB 1557, CenterLink's Duval County member center has not received any referrals from any DCPS school.

94. After the passage of HB 1557, employees of DCPS cancelled standing monthly meetings that had, up until that time, enabled CenterLink's Duval County member center to plan teacher trainings, establish and maintain referrals, coordinate the collection of data that is required under grants, and meet other requirements for the upcoming school year. Absent HB 1557, the member center would be using those DCPS-led meetings to plan summer teacher training, identify prospective GSA teacher sponsors, and plan for a student leadership retreat, as it has done in prior summers. Because of HB 1557, the collaboration has been stalled and that work has been put on hold. The member center wishes to continue speaking with teachers and students through this work.

95. As part of its subcontracted work under the federal collaborative grant,

CenterLink's Duval County member center worked for many years with DCPS and other community stakeholders to create an LGBTQ+ student support guide so that students, including the member center's participants, could expect a safe environment at any school across the district. However, DCPS staff charged with updating the guide to comply with HB 1557 have proposed to cut the length of the guide from 37 pages to 8 pages, removing critical sections including those that guide teachers in responding to name-calling and bullying of LGBTQ+ students and that provide guidelines to protect students' personal information about their sexual orientation and gender identity. These changes forced by the District's interpretation of HB 1557 will leave students vulnerable to unequal treatment and harm. DCPS staff aim to implement the reduced guide before teacher training occurs during the week of August 8, 2022, or as soon as possible thereafter.

96. In the past, the Duval member center (as part of the collaborative federal grant) has been in contact with most or all of the GSA advisors for approximately 18-22 GSAs throughout DCPS. This summer, by contrast, only two advisors attended the most recent meeting. They explained that they and their colleagues are afraid to communicate through school email accounts or otherwise about GSA involvement because of HB 1557. The Duval member center wishes to continue speaking with these advisors.

97. The obstruction of the Duval County center's work by DCPS in implementing HB 1557 harms the center itself by rendering the center unable to fulfill all of its subcontracted obligations, in addition to frustrating its mission and diverting

its resources. HB 1557 has silenced this member center, prevented its staff from fully communicating with students, teachers, and school officials to the extent it has in the past to provide them with support, and otherwise obstructed its mission and its federally-funded work to support individual LGBTQ+ students and GSAs.

b. CenterLink member center in Orange County

98. A CenterLink member center in Orange County also has experienced harm as a result of HB 1557. This center operates facilitated peer-to-peer counseling sessions for LGBTQ+ youth. Before passage of HB 1557, these sessions averaged 7 to 10 youth in attendance. Since the law's enactment, the number of student attendees at these sessions has doubled. Students at these sessions have stated that HB 1557 has made them nervous and heightened their anxiety. Parents have sought out these services for their teens specifically because of HB 1557. As a result of the law, their teens no longer feel as though they have an inclusive, welcoming, and safe environment at school.

99. To make clear that students have an alternate safe space at the Orange County center despite HB 1557, this member center has spent approximately \$6,250 to advertise on local billboards the availability of its services to LGBTQ+ youth, and an additional sum on radio advertisements, in addition to the resources expended as a result of greater demand for its counseling sessions.

c. CenterLink member center in Palm Beach County

100. A CenterLink member center in Palm Beach County has experienced and continues to experience harm as a result of HB 1557 and its implementation by

SDPBC. At least some teachers in SDPBC who previously would refer students and their families to the center or direct them to resources provided by the center are no longer comfortable doing so in light of HB 1557's vague language, interfering with the center's ability to communicate with students who are not otherwise aware of the center.

101. The Palm Beach County member center has experienced an increased demand for its mental health services, resources, and support for local young people. HB 1557 has exacerbated a mental health crisis for LGBTQ+ youth, who—even before passage of HB 1557—already were four times more likely to attempt suicide or think about suicide than their non-LGBTQ+ peers. The staff at this member center have spent an inordinate amount of time and resources on mitigating the impacts of HB 1557 on students' mental health and quelling the anxiety of youth and families. The increased demand from LGBTQ+ youth and their families for direct services, driven by HB 1557, has exceeded the capacity of the center's staffing. Given the member center's limited resources, directing a large percentage of the staff to address concerns raised by HB 1557 has hindered the member center's ability to perform other program work, frustrated its mission, and hindered its ability to meet the needs of the LGBTQ+ community more generally.

102. SDPBC has cancelled several long-standing diversity and inclusion trainings for teachers on LGBTQ+ history and curriculum inclusion, removed inclusive materials in high school courses from the curriculum and several books with LGBTQ+ content from all classrooms, and is revising affirming policies and support

guides for LGBTQ+ students in response to HB 1557. For example, a teaching tool titled the “Genderbread Person,” which is a component of the Human Growth and Development curriculum for high school students, was removed from curriculum materials in response to HB 1557, and teachers have been instructed to restrict access to the books Call Me Max, I am Jazz, and Flamer. The Palm Beach County member center has provided trainings in the past, and would like to be able to perform trainings in the future, for SDPBC staff relating to best practices for working with LGBTQ+ youth.

103. OCPS, SDIRC, DCPS, and SDPBC continue to implement HB 1557 and the facts regarding implementation in each school district continue to evolve.

COUNT I

**Deprivation of Freedom of Speech and Expression, and Overbreadth
First Amendment to the U.S. Constitution
42 U.S.C. § 1983
Against All Defendants**

104. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 103 as if fully stated herein.

105. Plaintiffs Jen and Matt Cousins, P.C., M.C., N.C., and S.C., and Plaintiff Will Larkins state this cause of action against Defendant School Board of Orange County. Plaintiffs David Dinan, Vik Gongidi, K.R.D., and R.R.D. state this claim against Defendant School Board of Indian River County. Plaintiff CenterLink, on behalf of itself and its members, states this cause of action against Defendants School Board of Orange County, School Board of Duval County, and School Board of Palm

Beach County. All Plaintiffs seek preliminary and permanent injunctions, and challenge HB 1557, and any action by Defendants or their agents seeking to implement it both facially and as applied to them.

106. The First Amendment, as applied to the states through the Fourteenth Amendment and enforceable pursuant to 42 U.S.C. § 1983, provides in part that the government “shall make no law . . . abridging the freedom of speech.”

107. HB 1557 violates the First Amendment because it impermissibly chills the exercise of all Plaintiffs’ constitutionally protected speech, based on the content and viewpoint of their speech.

108. Discrimination against speech based on its content and viewpoint is a violation of the First Amendment. Efforts to suppress speech based on the government’s opposition to the speaker’s view are unconstitutional absent narrow tailoring in service of a compelling justification.

109. As its legislative history indicates, HB 1557 is a façade for viewpoint-based discrimination and is therefore facially unconstitutional under the First Amendment.

110. The manner in which the Defendant School Boards are implementing HB 1557 explicitly censors messages of inclusion, affirmation, and support with respect to students’ LGBTQ+ sexual orientation and gender identity and is therefore unconstitutional as applied to Plaintiffs under the First Amendment.

111. The First Amendment also protects a student’s right to receive information and ideas. A student’s constitutional right to receive information is

violated when library materials are removed or curriculum or classroom instruction are curtailed for a purpose not reasonably related to a legitimate pedagogical concern.

112. Additionally, a law may be invalidated as overbroad when a substantial number of its applications are unconstitutional, judged in relation to any permissible applications of the statute.

113. Plaintiffs Jen Cousins, Matt Cousins, P.C., M.C. S.C., N.C., Will Larkins, David Dinan, Vik Gongidi, K.R.D., and R.R.D. have engaged in affirming speech and expression concerning their own or others' sexual orientation and gender identity in school contexts and with students, and wish to continue to do so. These Plaintiffs already have been chilled and/or forced to self-censor by taking care not to mention their own or a family member's sexual orientation and/or gender identity in school contexts when they otherwise would engage in such speech and expression as a result of the implementation of HB 1557 by Defendants School Board of Orange County and School Board of Indian River County. HB 1557 impermissibly chills the exercise of these Plaintiffs' constitutionally protected speech and expression, based on content and viewpoint.

114. Additionally, HB 1557 chills and precludes teachers and school officials (1) from answering questions by students about the sexual orientation, family structure, and/or gender identity of Plaintiffs S.C., Will Larkins, David Dinan, Vik Gongidi, K.R.D., and R.R.D. in the same way teachers and school officials would answer questions about non-LGBTQ+ students or their families, (2) from intervening to explain that these Plaintiffs and their families are as worthy as any other family, and

(3) from protecting Plaintiffs P.C., M.C., S.C., N.C., Will Larkins, K.R.D., and R.R.D. from stigma and bullying as a result of their sexual orientation and gender identity or the sexual orientation and gender identity of their family members. HB 1557 harms these Plaintiffs, sending a message that they and/or their families are a topic too shameful or “inappropriate” for their teachers and classmates to discuss.

115. HB 1557, and its implementation by Defendants School Board of Orange County and School Board of Indian River County have censored materials in these school districts, depriving Plaintiffs P.C., M.C., S.C., N.C., Will Larkins, K.R.D., and R.R.D. of access to information and ideas, and curtailing classroom instruction, for a reason not reasonably related to a legitimate pedagogical concern, violating their First Amendment right to receive information.

116. Plaintiff CenterLink’s members have engaged and want to continue engaging in speech that affirms students’ sexual orientation and gender identity in communications with school officials, parents of LGBTQ+ students, and students themselves. Plaintiff CenterLink’s members have been silenced and have been prevented from communicating with school employees and students to the extent they have in the past, by Defendants School Board of Orange County, School Board of Duval County, and School Board of Palm Beach County as a result of HB 1557 because of the content and viewpoint of their speech. Plaintiff CenterLink’s members wish to continue engaging in speech that affirms students’ sexual orientations and gender identity and believe that their communications and the information they provide to students, parents of LGBTQ+ youth, and school staff, are critical to their

mission and the well-being of students.

117. The decision by Plaintiff CenterLink’s members to communicate a message of inclusion, affirmation, and support with respect to students’ LGBTQ+ sexual orientation and gender identity—consistent with their mission—constitutes protected First Amendment activity.

118. The purpose and effect of HB 1557 is to chill and suppress constitutionally protected First Amendment activity by targeting specific content and viewpoints for suppression. HB 1557, and its enforcement by Defendants School Board of Orange County, School Board of Duval County, and School Board of Palm Beach County have penalized Plaintiff CenterLink’s members by preventing their staff from engaging in affirming and inclusive speech and communications about sexual orientation and gender identity, by forcing them to spend additional resources on the mental health of young people at these school districts, and by interfering with their ability to comply with certain grant obligations and to seek future funding to do this mission-driven work.

119. Because a substantial number of the applications of HB 1557 are unconstitutional, judged in relation to its legitimate sweep, HB 1557 is also overbroad and its enforcement should be enjoined.

COUNT II

**Deprivation of Due Process of Law
Fourteenth Amendment to the U.S. Constitution
42 U.S.C. § 1983
Against All Defendants**

120. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 103 as if fully stated herein.

121. Plaintiffs Jen and Matt Cousins, P.C., M.C., N.C., and S.C., and Plaintiff Will Larkins state this cause of action against Defendant School Board of Orange County. Plaintiffs David Dinan, Vik Gongidi, K.R.D., and R.R.D. state this claim against Defendant School Board of Indian River County. Plaintiff CenterLink, on behalf of itself and its members, states this cause of action against Defendants School Board of Orange County, School Board of Duval County, and School Board of Palm Beach County. All Plaintiffs seek preliminary and permanent injunctions, and challenge HB 1557, and any action by Defendants seeking to implement it both facially and as applied to them.

122. The Due Process Clause of the Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983, provides that “[no] state shall . . . deprive any person of life, liberty, or property, without due process of law.”

123. Under the Fourteenth Amendment to the United States Constitution, a governmental enactment like HB 1557 is unconstitutionally vague if it fails to provide a person of ordinary intelligence fair notice of what is prohibited or is so standardless that it authorizes or encourages seriously discriminatory enforcement. Differently

stated, governmental enactments are unconstitutionally void for vagueness when their prohibitions are not clearly defined. Such enactments may also be void for vagueness if they inhibit First Amendment freedoms.

124. Vague prohibitions inhibit freedom of speech when individuals do not know whether their speech is permitted and choose not to exercise their rights for fear of the consequences.

125. HB 1557 includes vague and subjective terms that lend themselves to conflicting interpretations and it fails to provide adequate notice as to which information, concepts, and ideas may or may not be discussed or included in school settings in communications by Plaintiff students, Plaintiff parents, or by the staff of CenterLink and its member centers.

126. In spite of HB 1557's vagueness, it includes a range of penalties if a parent were not satisfied with their child's school's or school district's handling of a complaint.

127. Plaintiff students and Plaintiff parents do not know which of their activities are prohibited by HB 1557 and are justifiably fearful of engaging in any speech or conduct that could be penalized by Defendants School Board of Orange County and School Board of Indian River County. Plaintiff CenterLink and its member centers are justifiably fearful that their communications and activities will be prohibited by Defendants School Board of Orange County, School Board of Duval County, and School Board of Palm Beach County, and their ability to perform their contractual obligations and seek future funding will be threatened, in spite of these

activities' centrality to their mission and their ability to serve and support LGBTQ+ youth.

128. HB 1557 violates the Due Process Clause of the Fourteenth Amendment and is void for vagueness because it infringes on all Plaintiffs' constitutionally protected right to free speech and provides inadequate notice of the conduct it purports to prohibit.

COUNT III

Deprivation of Equal Protection of the Laws Fourteenth Amendment to the U.S. Constitution 42 U.S.C. § 1983 Against All Defendants

129. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 103 as if fully stated herein.

130. Plaintiffs Jen and Matt Cousins, P.C., M.C., N.C., and S.C., and Plaintiff Will Larkins state this cause of action against Defendant School Board of Orange County. Plaintiffs David Dinan, Vik Gongidi, K.R.D., and R.R.D. state this claim against Defendant School Board of Indian River County. Plaintiff CenterLink, on behalf of itself and its members, states this cause of action against Defendants School Board of Orange County, School Board of Duval County, and School Board of Palm Beach County. All Plaintiffs seek preliminary and permanent injunctions, and challenge HB 1557, and any action by Defendants seeking to implement it both facially and as applied to them.

131. The Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983,

provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

132. HB 1557 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by discriminating against students and parents based on sex, sexual orientation, gender identity, and transgender status, both facially and as applied.

133. HB 1557 was enacted with the purpose to discriminate and has the effect of discriminating against students who have LGBTQ+ parents and family members, LGBTQ+ students, and LGBTQ+ parents, subjecting them to differential and adverse treatment on the basis of their sex, sexual orientation, gender identity, and transgender status, and/or the sex, sexual orientation, gender identity, and/or transgender status of their parents or family members.

134. HB 1557 shames and stigmatizes these students and families, invites school officials, teachers, and classmates to view them as inferior, harms their long-term health and well-being, and denies them equal educational opportunities on the basis of their sex, sexual orientation, gender identity, and transgender status.

135. HB 1557 has contributed to the creation of an anti-LGBTQ+ climate in the public schools operated by Defendants. It fosters a culture of silence and non-acceptance of LGBTQ+ students and LGBTQ+ families and discourages school officials from complying with their obligations to treat all students equally.

136. Discrimination based on sex, sexual orientation, gender identity, and transgender status each warrant at least heightened scrutiny.

137. HB 1557 does not serve any legitimate purpose, pedagogical or otherwise, let alone the exceedingly persuasive or compelling one required, and is instead rooted in animus toward and moral disapproval of LGBTQ+ people. HB 1557 lacks adequate tailoring in service of any such government purpose.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants on all claims, as follows:

A. A declaratory judgment that Fla. Stat. § 1001.42(8)(c) (2022) (referred to herein as “HB 1557”) and the actions taken to implement the law deprive Plaintiffs of their rights under the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution;

B. Preliminary and permanent injunctive relief enjoining enforcement of Fla. Stat. § 1001.42(8)(c) (2022) by Defendants and their respective officers, agents, servants, employees, attorneys, and successors, as well as all other persons who are in active concert or participation with them;

C. Award Plaintiffs costs, expenses, and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and,

D. Grant all other and further relief as the Court deems appropriate, just, and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a jury trial on all issues triable of right by a jury.

Respectfully submitted this 25th day of July 2022.

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Counsel for Plaintiffs

- July 25 2022 - Lambda Legal files lawsuit, joined by Southern Poverty Law Center, Southern Legal Counsel and private counsel Baker McKenzie.

Lambda Legal, the Southern Poverty Law Center, Southern Legal Counsel, and private counsel Baker McKenzie filed a federal lawsuit challenging Florida enacted House Bill 1557, commonly referred to as the “Don’t Say Gay” law.

[Show less](#)

Lambda Legal, the Southern Poverty Law Center, Southern Legal Counsel, and private counsel Baker McKenzie filed a federal lawsuit challenging Florida enacted House Bill 1557, commonly referred to as the “Don’t Say Gay” law.

The lawsuit argues that the law, which bans discussion of sexual orientation and gender identity in grades K-3 and restricts such discussions for students through grade 12 based on undefined standards of appropriateness, effectively silences and erases LGBTQ+ students and families. The law demands that school districts implement its terms and empowers any parent who believes a school is violating the law to sue the school district.

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19 August 2022, Friday, 00:55

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Re: *Cousins et. al. v Orange County School Board, et. al.* (Case 6:22-dv-01312)

I would like to make you aware of the following. The law as adopted includes Paragraph (c) added to subsection (8) STUDENT WELFARE of section 1001.42, Florida Statutes, includes subparagraph 2 which describes information on a student which can not be withheld from parents. Within subparagraph 2 is found the qualification “..., *unless a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect, as those terms are defined in s. 39.01...*”

I served Richard Corcoran, Education Commissioner of Florida, Florida Department of Education on 28 March 2022 and Mr. Tom Grady, Chair, Florida State Board of Education on 19 April 2022 with the Legal Notice as found in two attached pdfs. In addition, I served *All members* of the Orange County Board of Education with a similar notice on 28 June 2022 as found in a third pdf attached.

Perhaps these will be useful in your case.

I filed a formal complaint (attached as the fourth pdf) against the Florida Department of Education with the Office of Civil Rights of the United States Department of Education in Atlanta, Georgia on 28 March 2022 (OCR Complaint No. 04-22-4023). This complaint is pending the outcome of *Equality Florida et. al. v DeSantis, et. al.* (Case 4:22-cv-00134-AW-MJF) as there will be no need to proceed if the Court invalidates the law.

Hopefully, some of this will provide you with documentation or assist your case in other ways. Please feel free to contact me if you have any questions.

Respectfully,

Dr. Brian A. Smith (ret)
407.457.2800

From: briansmithdc@aol.com,

To: lorraine.ierier@ed.gov,

Subject: Florida Dept of Education | #04224031 | LOA |

Date: Sat, Aug 20, 2022 3:57 am

Attachments: 2022 0725 Cousins et al v Orange CO SN et al _complaint.pdf (332K)

Dear Ms. Iver,

As you know, Equality Florida, et al have filed suit against Florida Governor DeSantis regarding the Don't Say Gay bill that he signed into law on 28 March 2022. That suit may end with the law being disallowed and pursuing the complaint I filed with your office, referenced above, may be pointless.

Another suit recently filed may also impact that law too. I have attached a copy of that suit which was filed on 28 July 2022 for your records to keep track of what arguments have been raised and to know, when decided, exactly what the opinion the Court is.

Respectfully,

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